84-704

Office - Supreme Court, U.S.
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CLERK

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

QUESTION PRESENTED

WHETHER IT IS A VIOLATION OF THE 14TH AMENDMENT FOR A FLORIDA COURT TO ASSERT IN PERSONAM JURISDICTION OVER A NON-RESIDENT PANAMANIAN CORPORATION IN PERSONAL INJURY LITIGATION ARISING FROM AN ACCIDENT WHICH OCCURRED IN JAMAICA, WEST INDIES, WHERE THE ALIEN CORPORATE DEFENDANT DOES NOT DO BUSINESS IN FLORIDA AND THE PLAINTIFFS WERE RESIDENTS AND CITIZENS OF JAMAICA AT THE TIME OF THE ACCIDENT.

PARTIES TO THE PROCEEDING

Petitioner, TROPIGAS, S.A., is a Panamanian corporation which does not operate or do business in the United States. TROPIGAS, S.A. is a resident of Jamaica and does business there. It is a subsidiary of Tropigas International Corporation, a Delaware holding company. 1/

The Respondents are RICHARD ANDERSON, PERCIVAL ANDERSON, MELVA ANDERSON, TREVOR ANDERSON and SHARON ANDERSON, Jamaican citizens who allege personal injuries as a result of a fire in Jamaica in February of 1981.

1/ TROPIGAS, S.A. is composed of wholly owned operating companies located in Bermuda, Dominican Republic, Haiti, Jamaica, Panama, El Salvador, Honduras, and Guatemala. TROPIGAS, S.A. owns more than five (5) percent of the stock of Tropigas de Centro America (Panama), Tropigas de Costa Rica, Tropigas de Nicaragua, Tropigas de El Salvador, Tropigas de Honduras, Tropigas de Guatemala, Terminales de Gas, S.A. (Guatemala) and Cylgas de Costa Rica. None of these companies do business in Florida or elsewhere in the United States.

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

OPINIONS BELOW

The opinion of the Third District Court of Appeal of Florida affirming the trial court's denial of the Motion to Dismiss filed by Petitioner is included in the Appendix to this Petition [App. p. 1a] and is reported at 447 So. 2d 338 (Fla. 3d DCA 1984). Also included in Petitioner's

Appendix is the opinion of the Supreme Court of Florida dismissing Petitioner's Appeal to that Court. [App. p. 4a]. The opinion of the Supreme Court of Florida is not reported as of the date of this petition.

STATEMENT OF JURISDICTIONAL GROUNDS

A. Date of Decision Sought to be Reviewed.

The decision of the Third District Court of Appeal of Florida which Petitioner seeks to have reviewed is dated and was entered February 28, 1984. [App. p. 1a].

B. Date of Order on Rehearing.

Petitioner filed a Motion for Rehearing and Rehearing En Banc which was

denied by the Third District Court of Appeal of Florida by its Order dated and entered on April 13, 1984. [App. p. 3a].

C. Jurisdictional Provision Relied on.

Petitioner invokes the discretionary jurisdiction of this Court pursuant to the provisions of 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The Constitution of the United States at the Fourteenth Amendment, Section 1 provides that:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is an action by Respondents for personal injuries alleged to have been sustained in a fire in Kingston, Jamaica on February 11, 1981 caused by a faulty gas cylinder or valve. Respondents were at all times prior to and at the time of the accident, citizens and residents of Jamaica.

Petitioner is and was at all times material hereto, a Panamanian corporation operating in Central America and in the Caribbean. TROPIGAS, S.A. is wholly owned by TROPIGAS INTERNATIONAL CORP. [App. p. 16a].

TROPIGAS INTERNATIONAL CORP., (also named as a Defendant but not involved in this appeal), is a holding company which monitors the financial performance of its

wholly owned subsidiaries including TROPIGAS, S.A. [App. p. 27a]. Petitioner provides certain financial information to its parent and has some common officers with it. TROPIGAS INTERNATIONAL CORP. occasionally assists TROPIGAS, S.A. in purchasing materials available only in the United States. [App. p. 63a]. The goods purchased through its parent in the years 1980-1983 did not exceed a total of $10,000.00. [App. p. 54a].

TROPIGAS, S.A. maintains bank accounts in each country where it operates. [App. p. 51a]. It also maintains through a bank in Florida an offshore account in the Bahamas where its funds are invested in Eurodollars. The purchases referred to above are made with checks drawn on this account. [App. pp. 58a-59a].

The facts which make it clear that the maintenance of jurisdiction over

TROPIGAS, S.A. is a denial of due process are listed below:

1. The accident alleged occurred in Jamaica.

2. The Respondents were citizens and residents of Jamaica at the time of the accident and are still citizens of Jamaica.

3. The valve, cylinder and gas alleged to have caused the accident were purchased, delivered and used in Jamaica.

4. Respondents have alleged and Petitioner agrees that Jamaican law applies.

5. The majority of the actual and potential witnesses reside in Jamaica, including occurrence witnesses, medical witnesses, background witnesses and technical witnesses.

6. Petitioner has no means of obtaining compulsory process over witnesses

or other evidence located in Jamaica [App. pp. 36a-37a] while Respondents have obtained orders from the Florida trial court requiring Petitioner to produce witnesses and documents from Jamaica in Florida.

7. Petitioner has no means of impleading third parties in Jamaica such as the manufacturer of the gas which is the Jamaican government, or the distributor of the cylinder involved in the alleged accident, which does business solely in Jamaica.

8. TROPIGAS, S.A. has never sold any products in Florida. [App. p. 29a].

9. TROPIGAS, S.A. has never solicited any business in Florida; [App. p. 29a].

10. TROPIGAS, S.A. has never earned any income in Florida; [App. pp. 17a-43a].

11. TROPIGAS, S.A. has not been able to transfer any earnings out of its Jamaican branch for six years because of currency control in Jamaica. [App. p. 57a].

12. TROPIGAS, S.A. has no employees in Florida; [App. p. 28a].

13. The common officers of TROPIGAS, S.A. and TROPIGAS INTERNATIONAL CORP. are not compensated for any services provided to TROPIGAS, S.A., and these common officers do not run the business activities of TROPIGAS, S.A. [App. pp. 28a, 38a-39a, 61a].

14. TROPIGAS, S.A. has never been authorized to do business in Florida. [App. p. 14a].

15. TROPIGAS, S.A. is not engaged in business anywhere in the United States. [App. pp. 19a, 28a].

16. TROPIGAS, S.A. owns no real property in Florida. [App. p. 29a].

17. The vast majority of purchases made by TROPIGAS, S.A. are made outside of Florida, [App. p. 53a], and the few purchases made through Florida are for items not obtainable elsewhere. [App. p. 63a]. In the years 1980-1983 these purchases did not exceed a total of $10,000. [App. p. 54a].

18. The operations of TROPIGAS, S.A. are controlled by its division managers, who are located in each country where it operates and they direct the daily financial and operational activities in each country. [App. p. 28a].

19. TROPIGAS, S.A. reports certain financial data to TROPIGAS INTERNATIONAL CORP. which provides data processing services, but each branch of TROPIGAS, S.A. has its own bookkeeping department and

maintains its own separate accounting records. [App. p. 62a].

20. Occassionally TROPIGAS, S.A. requests and receives technical advice from TROPIGAS INTERNATIONAL CORP., but the divisions of TROPIGAS, S.A. have their own technical staffs, are free to consult other sources for technical advice and they often do. The technical assistance is generally provided in the foreign country where the TROPIGAS, S.A. division is located, and the TROPIGAS, S.A. division is not required to follow the advice given by TROPIGAS INTERNATIONAL CORP. [App. p. 48a-49a].

21. The local division managers are equal to chief operating officers for the operations in each country and are delegated complete authority to run their division independently. [App. p. 61a].

22. The common officers of TROPIGAS, S.A. who are located in Florida do not involve themselves in the operation of TROPIGAS, S.A. beyond receiving advisory reports, consolidated financial data and occasional capital expenditure requests. [App. pp. 38a-39a, 60a-61a].

23. The division managers in each country are responsible for the safety of that division [App. pp. 27a-28a, 42a] and are responsible for the selection of the valves and cylinders to be used by that division. [App. pp. 38a, 40a-48a, 51a].

24. The final decision as to all operational matters, including technical matters, rests with the division manager in each country. [App. pp. 28a, 40a-48a].

25. Contracts are not negotiated in Florida for TROPIGAS, S.A., [App. p. 39a], and the purchases made by division managers in each country are not normally reviewed in Florida. [App. p. 52a].

26. Regulations promulgated by the government of Jamaica control the types of valves and cylinders used in Jamaica by TROPIGAS, S.A. [App. p. 50a].

27. Cylinders for use in Jamaica have never been purchased by TROPIGAS, S.A. in Florida. [App. pp. 52a-53a].

28. The limited services provided to TROPIGAS, S.A. by its parent company in Florida are charged to and paid for by TROPIGAS, S.A. [App. p. 56a].

Respondents filed an action seeking damages for personal injuries in the Circuit Court in and for Dade County, Florida, alleging that TROPIGAS, S.A. and TROPIGAS INTERNATIONAL CORP. committed various acts of negligence which proximately caused their injuries. TROPIGAS, S.A. filed a motion to dismiss the Complaint on grounds that the courts of Florida could not constitutionally main-

tain in personam jurisdiction over TROPIGAS, S.A. and that the courts of Florida were not a convenient forum. [App. p. 11a]. Respondents took twenty-two depositions in an effort to develop facts which would support their assertion of jurisdiction. The trial court, in denying Petitioner's Motion to Dismiss, failed to provide any grounds for its denial. [App. p. 9a].

TROPIGAS, S.A. then took an interlocutory appeal to the Third District Court of Appeal of Florida which affirmed the decision of the trial court in a brief opinion. [App. p. 1a].

After the Third District Court of Appeal denied a rehearing, an appeal was filed in the Supreme Court of Florida by Petitioner. This appeal was dismissed, and Petitioner filed a Motion for Clarification, which was denied. [App. p. 5a].

TROPIGAS, S.A. raised the constitutional issues relating to the violation of its Fourteenth Amendment due process rights in its Motion to Dismiss [App. p. 11a], Memorandum in Support Of Its Motion to Dismiss (not made part of the Appendix to this Petition due to its length), Notice to Invoke Discretionary Jurisdiction of the Supreme Court of Florida [App. p. 6a], and in TROPIGAS, S.A.'s Initial Brief to the District Court of Appeal (also not attached for reasons of length.)

At every available opportunity TROPIGAS, S.A. has raised the constitutional issues that are the bedrock of this appeal. There has not been a single occasion where the denial of Petitioner's right to Fourteenth Amendment due process was not raised and put before the court.

REASONS FOR GRANTING WRIT

The Third District Court of Appeal of Florida has violated the rights guaranteed to TROPIGAS, S.A. by the Fourteenth Amendment by affirming the denial of Petitioner's Motion to Dismiss because there are insufficient contacts to maintain in personam jurisdiction over TROPIGAS, S.A. based on the facts of this case. The decisions from which this Petition arises are contrary to this Court's decision in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and the cases which have followed that decision including Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984), decided on April 24, 1984 (after the decisions of the trial court and the Third District Court of Appeal of Florida in the instant case).

ARGUMENT

THE DECISION FROM WHICH REVIEW IS SOUGHT CONFLICTS WITH THE DECISION OF HELICOPTEROS NACIONALES DE COLOMBIA, S.A. V. HALL, 104 S.CT. 1868 AND IS CONTRARY TO THE PRINCIPLES OF IN PERSONAM JURISDICTION OVER NON-RESIDENT CORPORATE DEFENDANTS DEFINED IN THE DECISIONS OF THE COURT IN INTERNATIONAL SHOE CO. V. WASHINGTON, 326 U.S. 310 (1945) AND WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON, 444 U.S. 286 (1980)

The issue before the Court is whether the type and extent of activities engaged in by TROPIGAS, S.A. in Florida are sufficient properly to subject that non-resident alien corporation to the in personam jurisdiction of the courts of Florida.

The Fourteenth Amendment limits the ability of a state to assert in personam jurisdiction over a non-resident defendant. Pennoyer v. Neff, 95 U.S. 714

(1877). The requirements of due process are satisfied with regard to in personam jurisdiction over a non-resident corporate defendant only where that defendant has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

No polestar exists by which the type and extent of contacts of a non-resident corporate defendant can be precisely measured to determine the propriety of an assertion of in personam jurisdiction. As stated in International Shoe:

> It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. . . . whether due process is satisfied must depend rather upon the quality and nature of the activ-

> ity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. (Emphasis added).

326 U.S. at 319.

The principal point made by Helicopteros, supra, is that the holding of International Shoe, and cases following it are specifically applicable to a non-resident alien corporation. International Shoe held that in order for a forum to exercise jurisdiction over a non-resident defendant there must exist "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316, citing Milliken v. Meyer, 311 U.S. 457, 463 (1940). Most importantly the activities of the corporation must "have not only been continuous and systematic, but also give rise to the liabilities sued

on." 326 U.S. at 317. See also, Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437 (1952); Restatement (Second) of Conflict of Laws § 47 (1971).

In defining the extent of permissible activities which would not be sufficient contacts, the Court in International Shoe stated that:

> [I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporations behalf are not enough to subject it to suit on causes of action unconnected with the activities there.

326 U.S. at 317. At best TROPIGAS, S.A.'s activities in Florida are "isolated items of activities". They are not related to the facts which are the basis of this personal injury action, which arises from an accident in Jamaica where TROPIGAS, S.A. ran an ongoing business, the activites of which allegedly gave rise to

the injuries suffered by the Plaintiffs/ Respondents.

Facts of this case are closely analogous to those in Helicopteros, supra, a wrongful death action arising from the crash of a helicopter in Peru. In Helicopteros it was held that a non-resident alien corporation's activities in Texas consisting of negotiating contracts, accepting checks drawn on local banks, training employees and making substantial purchases of helicopters and parts were not sufficient contacts with Texas so as to permit the maintenance of jurisdiction over that defendant by the personal representatives of American citizens who were killed when one of the helicopters crashed in Peru. The pilot of the helicopter had been trained in Texas and the decedent's employer's headquarters were in Texas.

Among the contacts of the defendant in Helicopteros was the existence of substantial purchases in Texas of helicopters and parts along with related training trips. In rejecting the contention that these purchases and training trips were significant benchmarks in the due process determination, the Court held that: "Mere purchases, even if occuring at regular intervals, are not enough to warrant a state's assertion of in personam jurisdiction over a non-resident corporation in a cause of action not related to those purchase transactions." 104 S.Ct. at 1872, citing Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923).

Especially instructive in Helicopteros is the Court's citation to Hanson v. Denckla, 357 U.S. 235 (1958) for the rule that "the unilateral activity of those who

claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state." 357 U.S. at 253. This is especially significant because the court in Hanson, in an in-depth analysis of the contacts rule, stated that:

> The application of that rule will vary with the quality and nature of the defendant's activity but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

357 U.S. at 253.

An analysis of the quality and nature of contacts Petitioner has with the State of Florida reveals that its contacts and activities are not acts by which TROPIGAS, S.A. purposefully avails itself of the benefits and protections of Florida law.

The facts in Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) demonstrate the type of activities of an alien corporation which provide a basis for jurisdiction. In Perkins the Court examined the totality of the corporate activities of the corporate defendant being carried on in and out of the jurisdiction, and found that the activities in the forum constituted continuous and systematic corporate activities when compared to the overall corporate activities of the corporation. In Perkins, as a result of the Japanese occupation of the Phillipines, the president of the defendant alien company moved its operations to Ohio and, in essence, conducted most, if not all, of the corporate business in Ohio.

By comparison the activities of TROPIGAS, S.A. in Florida are not con-

tinuous or systematic, and are only a very small portion of the overall corporate activities of the Petitioner. The only recurrent contact TROPIGAS, S.A. has with Florida is that financial information is reported there to its parent corporation. There is no case which holds that the mere act of reporting financial information to an entity in the forum can constitute a sufficient basis upon which to subject the reporting entity to the in personam jurisdiction of the forum.

In refusing to grant TROPIGAS, S.A.'s Motion to Dismiss the trial court and the District Court of Appeal improperly held that TROPIGAS, S.A. was subject to the in personam jurisdiction of the Florida courts on the basis of the irregular and incidental contacts TROPIGAS, S.A. has with the state of Florida. This holding conflicts with the Court's decisions in

Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) and International Shoe Co. v. Washington, 326 U.S. 310 (1945) and results in an unconstitutional exercise of in personam jurisdiction over TROPIGAS, S.A. in violation of the due process clause of the Fourteenth Amendment.

This cause should be summarily remanded to the District Court of Appeal of Florida, Third District, for an opinion consistent with the Court's decision in Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984).

CONCLUSION

For the foregoing reasons set forth above, Petitioner urges that this Petition for a Writ of Certiorari be granted.

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Telephone: (305) 379-6523

DATED: August 20, 1984.

CERTIFICATE OF SERVICE

I, CHRISTIAN D. KEEDY, being over the age of 18 years, hereby certify that I have this twentieth day of August, 1984, served three copies of the foregoing Petition For Writ Of Certiorari to the District Court of Appeal, Third District to all counsel of record listed below with their mailing addresses, by mailing said copies in sealed envelopes, first class postage prepaid, deposited at the United States Post Office located at One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida.

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/s/_____
CHRISTIAN D. KEEDY

APPENDIX

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1984

TROPIGAS, S.A. **
Appellant, **

vs. ** CASE NO. 83-2854

RICHARD ANDERSON, et al., **
Appellee. **

Opinion filed February 28, 1984.

An Appeal from a non-final order from the Circuit Court for Dade County, Mario Goderich, Judge.

Christian D. Keedy, for appellant.

Daniels and Hicks and Sam Daniels and Patrice A. Talisman; Robert J. Dickman, for appellees.

Before HENDRY, NESBITT and PEARSON, Daniel S., JJ.

PER CURIAM.

Affirmed. § 48.081(5), Fla. Stat. (1983); Houston v. Caldwell, 359 So. 2d 858 (Fla. 1978); Sempe v. Coordinated Caribbean Transport, Inc., 363 So. 2d 194 (Fla. 3d DCA 1978); Adams v. Seaboard Coast Line R.R., 224 So. 2d 797 (Fla. 1st DCA 1969).

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D., 1984
FRIDAY, APRIL 13, 1984

TROPIGAS, S.A., **

Appellant, **

vs. ** CASE NO. 83-2854

RICHARD ANDERSON, et al., **

**

Appellee.

Upon consideration, appellant's motion for rehearing is hereby denied.

A True Copy

ATTEST:
LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By/s/Evelyn A. Hillman
Deputy Clerk

cc: Christian D. Keedy
Sam Daniels
Robert J. Dickman

SUPREME COURT OF FLORIDA

TUESDAY, MAY 22, 1984

TROPIGAS, S.A.,	*	
	*	
Petitioner,	*	
	*	
v.	*	CASE NO. 65,313
	*	
RICHARD ANDERSON, et al.,	*	District Court of Appeal, 3d District - No. 83-2854
Respondents.	*	
	*	

* * * * * * * * * * * *

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy TC
TEST:

cc: Hon. Louis J. Spallone, Clerk
Hon. Mario Goderich, Judge
Hon. Richard P. Brinker, Clerk
Christian D. Keedy, Esquire
Robert J. Dickman, Esquire
Robert J. Black, Esquire
Sam Daniels, Esquire
Debra L. Brady, Esquire

Sid J. White
Clerk, Supreme Court
by:/s/ Tanys Carroll
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
MONDAY, JULY 9, 1984

TROPIGAS, S.A.,	**	
Petitioner,	**	CASE NO. 65,313
vs.	**	District Court of Appeal, 3d
RICHARD ANDERSON, et al.,	**	District - No. 83-2854
Respondents.	**	

On consideration of the motion for clarification filed by attorney for petitioner,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy TC

TEST:

cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Mario P. Goderich, Judge
Christian D. Keedy, Esquire
Robert J. Dickman, Esquire
Sam Daniels, Esquire
Robert J. Black, Esquire
Debra L. Brady, Esquire

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT
JANUARY TERM, A.D., 1984
CASE NO. 83-2854

TROPIGAS, S.A.,	:	
Appellant,	:	NOTICE TO INVOKE DISCRETIONARY
v.	:	JURISDICTION
RICHARD ANDERSON, et al.,	:	
Appellees.	:	

NOTICE IS GIVEN that TROPIGAS, S.A., Defendant, Petitioner, invokes the discretionary jurisdiction of the Supreme Court to review the decision of this Court rendered February 28, 1984, Rehearing denied April 13, 1984. The decision of the Third District Court of Appeal expressly construes Amendment XIV, Section 1 of the United States Constitution and

Article 1, Section 9 Due Process of the Florida Constitution.

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(305) 379-6523

By/s/Christian D. Keedy
Christian D. Keedy, P.A.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was mailed on this 11th day of May, 1984 to: Robert J. Dickman, P.A., 4675 Ponce de Leon Blvd., Suite 302, Coral Gables, Florida 33146; Robert J. Black, Esquire, 420 S. Dixie Highway, Coral Gables, Florida, 33146; Sam Daniels, Esquire, 1414 Alfred I. duPont Building, 169 E. Flagler Street, Miami, Florida 33131; and Debra L. Brady, Esquire, 1301 Alfred I.

duPont Building, 169 E. Flagler Street, Miami, Florida 33131.

By/s/Christian D. Keedy
Christian D. Keedy, P.A.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.	)	
Plaintiffs,	)	
vs.	)	ORDER
TROPIGAS INTERNATIONAL CORP. and TROPIGAS, S.A.	)	
Defendants.	)	

THIS MATTER having come before the Court on motion of TROPIGAS, S.A. to dismiss the Complaint, and the Court having heard argument of counsel, it is hereby

ORDERED AND ADJUDGED that TROPIGAS, S.A.'s Motion to Dismiss be and the same is hereby denied.

DONE AND ORDERED in chambers at Miami, Dade County, Florida this 15 day of November, 1983.

/s/ Mario Goderich
Circuit Court Judge

Copies furnished to:

Christian D. Keedy, P.A.
Debra L. Brady, Esq.
Robert J. Dickman, P.A.
Robert J. Black, Esq.
Sam Daniels, Esq.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.,)

Plaintiffs,)

v.)

TROPIGAS INTERNATIONAL)
CORPORATION, and
TROPIGAS, S.A.,)

Defendants.)

MOTION TO DISMISS

COMES NOW, the Defendant, TROPIGAS, S.A., by and through its undersigned attorneys, and moves this Court for an Order dismissing the Plaintiffs' Complaint for the reasons and on the grounds set out below:

1. This Court lacks personal jurisdiction over Tropigas, S.A.

2. The maintenance of this action by this Court against Tropigas, S.A. is a denial of due process to that Defendant.

3. This Court lacks jurisdiction over the subject matter of this litigation.

4. This litigation against Tropigas, S.A. should be dismissed on the basis of forum non conveniens.

5. This case should be dismissed because venue is improper.

6. Counts II, III, and IV of the Complaint should be dismissed because they fail to state a cause of action or claim upon which relief may be granted under the law of Jamaica, which is applicable herein.

7. The claims of Sharon Anderson and Trevor Anderson are not asserted by the proper party.

Respectfully submitted,

CHRISTIAN D. KEEDY, P.A.
Attorney for Tropigas, S.A.
169 East Flagler Street
Miami, Florida 33131
Telephone: (305) 379-6523

By/s/Christian D. Keedy
Christian D. Keedy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss was mailed to Robert J. Dickman, P.A., 4625 Ponce de Leon Boulevard, Suite 302, Coral Gables, Florida 33146; and to Robert J. Black, Esq., 420 South Dixie Highway, Coral Gables, Florida, this 25th day of January, 1983.

By/s/Christian D. Keedy
Christian D. Keedy

STATE OF FLORIDA
DEPARTMENT OF STATE

I, GEORGE FIRESTONE, Secretary of State of the State of Florida, do hereby certify that the files of this office do not disclose a record of a corporation by the name of TROPIGAS, S.A., either as a domestic corporation or as a foreign corporation, active or dissolved.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this 29th day of April, 1983.

/s/ George Firestone
Secretary of State

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.,)

Plaintiffs,)

vs.)

TROPIGAS INTERNATIONAL CORPORATION and TROPIGAS, S.A.,)

Defendants.)

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

COMES NOW, KIRK FROHME, who after being duly sworn does depose and say as follows:

1. My name is Kirk Frohme and I am a partner in the accounting firm of Coopers & Lybrand.

2. I am a certified public accountant and in that capacity I have

worked with Tropigas International Corp. and its subsidiaries over the past six years.

3. From this work and from review of the financial books and records of Tropigas International Corp., I have become familiar with that company's activities and the businesses of its subsidiaries and their divisions in Central America and the Caribbean. The business of their subsidiaries and divisions has been generally the same over the last six years.

4. Tropigas, S.A. is a wholly owned subsidiary of Tropigas International Corp.

5. Each division or subsidiary of Tropigas, S.A. exists and is operated as a separate and distinct business enterprise in the country where it is located.

6. Tropigas International Corp. and Tropigas, S.A. are separate and distinct

corporations in form, i.e., as the books and records are kept, and in substance, i.e., as the day-to-day activities of these companies are conducted.

7. Tropigas International Corp. and Tropigas, S.A. are separately maintained and managed, both in their day-to-day activities and in their planning for the future.

8. Tropigas, S.A. is not and has not been undercapitalized. It has now and has had in the past six years sufficient income to pay the expenses of its operation and finance capital improvements and expansion.

9. Tropigas, S.A. has no employees in the United States and earns no income in the United States. Tropigas, S.A. does not pay U.S. income tax and does not have any investments in the United States.

10. Financial books and records of Tropigas, S.A. are maintained separately from the financial books and records of Tropigas International Corp. All transactions between the two corporations are represented by appropriate entries in their respective books.

11. Tropigas, S.A. and Tropigas International Corp. have some common officers and directors, but proper corporate formalities are followed which establishes that as a practical matter the corporate separateness between Tropigas, S.A. and Tropigas International Corp. exists and to my knowledge has always been maintained.

12. Tropigas International Corp. is a holding company which owns Tropigas, S.A. and four other corporations.

13. Tropigas, S.A. is a Panamanian corporation, which is engaged in the sale

of liquefied petroleum gas in Jamaica and other countries in the Caribbean and Central America.

14. Tropigas, S.A. does not do business in the State of Florida or elsewhere in the United States.

15. Separate accounting, books and records are maintained at each division or subsidiary of Tropigas, S.A. Each division or subsidiary has its own bookkeeping staff.

16. Data processing services are provided by Tropigas Data Services, Inc. in Coral Gables which consist of preparation of consolidated financial statements of Tropigas International Corp. and computer generated management reports. Underlying accounting records and supporting documentation are prepared by personnel at the divisions and subsidiaries of Tropigas, S.A. and forwarded to

Tropigas Data Services, Inc. in Coral Gables for preparation of the aforementioned consolidated financial statements.

17. The accounting, books and records of the divisions and subsidiaries of Tropigas, S.A. are similar, because its divisions and subsidiaries are engaged in the same type of business, i.e., the sale of liquefied petroleum gas.

18. The relationship evidenced by the facts known to me concerning the existence and operations of Tropigas International Corp. and Tropigas, S.A. reflects a normal parent/subsidiary relationship. The divisions and subsidiaries of Tropigas, S.A., because of the diverse geographic, political, social and economic environments in which they operate, exercise considerable autonomy in their operations. Simply stated, Tropigas, S.A.'s business is conducted in foreign countries

whose social, political and economic conditions are frequently subject to significant changes which require local management to be able to promptly respond to those changes.

19. Each division or subsidiary of Tropigas, S.A. is operated by its general manager who is a resident of the country where that subsidiary or division is located.

20. The local manager of each Tropigas, S.A. subsidiary or division is responsible for the day-to-day operations of that business, the hiring and firing of its employees, the maintenance of its relationship with the local government, the expenditure of funds for its operations, the generation of revenues to satisfy capital, maintenance, and expansion needs, and the annual planning for operations as well as long term planning.

21. Some business policies of the subsidiary, Tropigas, S.A., are subject, by virtue of its stock ownership, to the ultimate review by Tropigas International Corp. and Tropigas International Corp. is informed of important actions taken by the management of the individual Tropigas, S.A. divisions or subsidiaries. However, the divisions or subsidiaries of Tropigas, S.A. have independent responsibilities for the management of their respective businesses, including control over day-to-day operations.

22. Each individual division or subsidiary of Tropigas, S.A. is responsible for the training of its employees, maintaining bank accounts and managing funds in the country where the operations are conducted, and is responsible generally for financial management of the division or subsidiary.

23. Each division or subsidiary of Tropigas, S.A. is responsible for its own marketing and advertising programs. These programs vary from country to country based upon social and economic conditions existing in those countries.

24. The Jamaican division of Tropigas, S.A. pays taxes in Jamaica. Tropigas International Corp. does not pay taxes in Jamaica because it is not doing business in that country.

25. Because of currency controls imposed by the Government of Jamaica which arise from that country's lack of foreign exchange or foreign currency, the Tropigas, S.A. division operating in Jamaica has been unable to remit dividends on a timely basis and has had and continues to have difficulty obtaining foreign currency for imports.

26. Currency controls and import restrictions limit the ability of the Jamaican division of Tropigas, S.A. to purchase materials, equipment and services outside of the country of Jamaica.

27. Coopers & Lybrand audits of Tropigas, S.A. have not been done in Florida. These audits are done in each foreign country in which a subsidiary or division of Tropigas, S.A. operates.

28. Coopers & Lybrand audits the Jamaican division of Tropigas, S.A. annually because Jamaican law or regulations requires annual audits.

FURTHER, AFFIANT SAYETH NOT.

/s/Kirk Frohme
KIRK FROHME

SWORN TO AND SUBSCRIBED before me the undersigned Notary Public of the State of

Florida at Large this 11th day of November, 1983, at Miami, Dade County, Florida.

/s/Wynona Dawn Neary
Notary Public, State of
Florida at Large

My commission expires:
10-1-87

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT

GENERAL JURISDICTION DIVISION

CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.,)

Plaintiffs,)

vs.)

TROPIGAS INTERNATIONAL CORPORATION and TROPIGAS, S.A.,)

Defendants.)

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

COMES NOW, TOMMIE DEAN PORTER, who after being duly sworn does depose and say:

1. My name is Tommie Dean Porter and I am the President and Chief Executive Officer of Tropigas International Corp.

2. Tropigas International Corp. is a Delaware corporation which is not engaged

in business activities in the State of Florida.

3. Tropigas International Corp. does not engage in the manufacture, design, assembly, or distribution of LPG, cylinders or related products.

4. Tropigas International Corp. is a holding company which owns all of the stock of Tropigas, S.A.

5. Tropigas International Corp. has an office at 1701 Ponce de Leon Boulevard, Coral Gables, Florida, but it conducts no business in Florida. Tropigas International Corp. acts only as a holding company and manages its internal affairs at 1701 Ponce de Leon Boulevard.

6. Tropigas, S.A. was in existence and doing business prior to Tropigas International Corp.; Tropigas International Corp. did not create Tropigas, S.A.

7. Tropigas, S.A. is not engaged in business in the State of Florida or elsewhere in the United States and does not avail itself of any of the privileges and benefits of the law of the United States or Florida.

8. Tropigas, S.A. has no employees in the United States, nor does it have distributors or salesmen here.

9 Tropigas, S.A. is engaged in the business of selling liquified propane gas in Jamaica.

10. Tropigas, S.A.'s business in Jamaica is directed and controlled by its general manager in Jamaica.

11. The general manager of Tropigas, S.A. in Jamaica is responsible for the day-to-day operation of that division. He is also responsible for the financial and long-range planning for the operation and financing of that division of Tropigas, S.A.

12. Tropigas, S.A. does not maintain an office or telephone listing in the State of Florida.

13. Tropigas, S.A. is a separate business entity from Tropigas International Corp., and it maintains its own books and records.

14. Tropigas, S.A. is a self-sufficient business enterprise, and has not in the past and does not now borrow money from Tropigas International Corp.

15. Tropigas, S.A. does not advertise or solicit any business in the State of Florida.

16. Tropigas, S.A. closes no sales and performs no services in the State of Florida.

17. Tropigas, S.A. has no real or personal property in the State of Florida.

18. Tropigas, S.A. does not have or use the same logo as Tropigas International Corp.

19. The Jamaican division of Tropigas, S.A. is responsible for its own advertising and marketing of its products in Jamaica.

20. The general manager of Tropigas, S.A.'s division in Jamaica is responsible for the training of employees of that division, implementation of safety programs, and determination of the nature and type of equipment which shall be used in business activities conducted by that division.

21. Tropigas, S.A. has employees in Jamaica, and it conducts its operations in that country in accordance with the law and regulations applicable to its business there. Tropigas, S.A. pays taxes in Jamaica. Tropigas, S.A. is not subject to and does not pay income taxes in the United States, because it is engaged in no business in the United States and generates no revenue here.

22. Tropigas, S.A. is a Panamanian corporation established in April of 1954 and residing in Avenida, Central No. 33, Ciudad de Panama, Republic of Panama.

23. Tropigas, S.A. is subject to the jurisdiction of the courts in Jamaica and is subject to execution to satisfy a judgment, which may be entered against it in the courts of that country arising from the claims alleged in this Complaint.

24. Tropigas International Corp. is not subject to the jurisdiction of Jamaican courts, but will voluntarily appear and submit itself to the jurisdiction of the courts of that country in litigation arising from the claims alleged in this Complaint.

25. Tropigas International Corp. will agree to be subject to execution to satisfy any judgment, which may be entered against it in the courts of Jamaica aris-

ing from the claims alleged in the Complaint.

26. Tropigas International Corp. and Tropigas, S.A. have done business and/or conducted their activities in the same manner over the last five years. There have not been substantial changes in any of these companies' form or in their method or manner of operations during this period of time.

27. I make this affidavit based on my personal knowledge, and books and records of Tropigas International Corp. and Tropigas, S.A. which I have reviewed in my capacity as President and Chief Executive Officer of Tropigas International Corp.

FURTHER, AFFIANT SAITH NOT.

/s/Tommie Dean Porter
TOMMIE DEAN PORTER

SWORN TO AND SUBSCRIBED before me the undersigned Notary Public of the State of

Florida at Large this 11th day of November, 1983, at Miami, Dade County, Florida.

/s/Betty J. Kitchen
Notary Public, State of
Florida at Large

My commission expires:
12/30/84

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 82-25066-CA-20

RICHARD ANDERSON, et al)

Plaintiffs)

vs.)

TROPIGAS INTERNATIONAL)
CORPORATION and
TROPIGAS, S.A.,)

Defendants)

AFFIDAVIT

COMMONWEALTH OF JAMAICA)
PARISH OF KINGSTON)
CITY OF KINGSTON)

BEFORE ME, the undersigned authority appeared The Honourable Mr. Justice Leacroft Heriot Ulysees Robinson (Retired) who after being duly sworn did depose and say as follows:

1. My name is LEACROFT HERIOT ULYSEES ROBINSON. I am a citizen of Jamaica and I reside and have my postal address at Red Hills, in the parish of Saint Andrew.

2. I am a Barrister and a Jamaican Attorney-at-Law and have practised law in Jamaica, as a Barrister and a Judge for over thirty (30) years.

3. I studied law at Gray's Inn, one of the four Inns of Court in London, England. Thereafter, I was called to the bar in England in 1948 and practised law there for one year.

4. In 1949 I returned to Jamaica and was admitted to practise as a Barrister. In 1959 I was appointed Queen's Counsel, a status of distinction under the British system of law and practiced in that capacity until I was appointed President of the Court of Appeal in Jamaica in 1976. I continued to serve on that Court until my retirement in 1981.

5. In 1977 I was appointed to the Order of Jamaica in recognition of my "distinguished services to Jamaica in the

fields of Politics, Public Service and the Law".

6. I was the Attorney General of Jamaica from 1972 through 1976.

7. I am also a past President of the Bar Association of Jamaica and of the Organization of Commonwealth Caribbean Bar Associations.

8. I have been consulted by the Defendants in this action regarding questions of Jamaican law and the opinions expressed herein are based on my personal knowledge and experience as a lawyer and Judge in Jamaica for over thirty (30) years as stated above.

****

22. There is no legal procedure in Jamaica through which parties or witnesses may be compelled to give oral testimony in

Jamaica prior to the actual trial of this case.

FURTHER, AFFIANT SAITH NOT.

/s/ Leacroft Heriot Ulysees Robinson
LEACROFT HERIOT ULYSEES ROBINSON

I HEREBY CERTIFY that on this day, before, me, an officer duly authorized by the laws of the jurisdiction identified above to administer oaths and take acknowledgements, personally appeared LEACROFT HERIOT ULYSEES ROBINSON, who after being sworn did depose and say the foregoing as his free act and deed.

SWORN TO AND SUBSCRIBED BEFORE ME this 25th day of MARCH, 1983.

/s/ Ward D. Morrow
WARD D. MORROW
Consul of the United
States of America

DEPOSITION OF ANTHONY AUTORINO
September 15, 1983

Q. Did you have any decision-making role concerning the type of valve that would be used in a particular country?

A. No.

Q. Whose decision was that in 1981?

A. The division manager.

Transcript P. 28 Line 17 through P. 28 Line 22

* * *

DEPOSITION OF JAMES ISAAC BULLEN
April 4, 1983

Q. So, you, as president of Tropigas, S.A., supervise the various managers in the various divisions of Tropigas, S.A. around the caribbean and Latin America?

. . .

A. No, sir, I don't supervise them. I receive the reports--They advise me what is going on at times but I don't get into the nitty-gritty and supervise, no.

They receive no supervision from me.

Transcript P. 12 Line 2,3,4,12,13,14,15,16

* * *

Q. So, it is your testimony that no contracts are negotiated at the Ponce office for Tropigas, S.A.?

A. Not to my knowledge.

Transcript P. 60 Line 2 through P. 60 Line 4

* * *

Q. Who decides what valves are to be used on the 25 pound tanks in Jamaica?

A. The Jamaican manager.

Transcript P. 87 Line 24 through P. 88 Line 1

* * *

Q. Is there one individual in Tropigas, S.A. responsible for the safety throughout the division?

. . .

A. No, the local manager is responsible for safety.

Transcript P. 94 Line 24,25 P. 95 Line 4,5

* * *

Q. I mean, as president of Tropigas, S.A., you must rely on the safety procedures established by Tropigas International through Mr. Lopez and the operation managers in the various divisions of Tropigas, S.A., is that correct?

. . .

A. No, I rely on the safety procedures established in the country in accordance to the regulations in these countries.

I rely on the local manager to assure that these procedures are indeed applied.

Transcript P. 97 Line 8,9,10,11,12,14,15, 16,17,18

* * *

Q. Where is the Tropigas Jamaica purchasing their cylinders at the present time?

A. From another cylinder manufacturer in Jamaica.

Q. What manufacturer is that?

A. It is a local company. I don't recall the name.

Q. Who oversees those purchases?

A. The local manager.

Q. Who supervises the local manager in those purchases?

A. He works jointly with the local operations manager.

Q. Do you oversee these purchases?

A. No.

Q. Who determines how many cylinders should be purchased and when?

A. The local manager.

Transcript P. 103 Line 19 through P. 104 Line 11

* * *

Q. Tropigas, S.A. gets no income from the State of Florida, does it?

A. No income.

Transcript P. 138 Line 6 through P. 138 Line 8

* * *

Q. Mr. Bullen, referring to the Jamaican division of Tropigas, S.A., who makes the decisions concerning hiring and firing of employees in that Jamaican division?

A. The local manager.

Q. Who selects the distributors of Tropigas products for the S.A. division in Jamaica?

A. The local manager.

MR. DICKMAN: You don't mean, the distributor, you mean the outlet?

MR. KEEDY: Distributors.

MR. DICKMAN: Well, that is their business. They distribute gas. That is what the company does.

I just don't understand the question. Let me object to it as being vague.

BY MR. KEEDY:

Q. Who determines the manner of local distribution of Tropigas products in Jamaica?

A. The local manager.

Q. Who selects retail outlets for Tropigas products in Jamaica?

A. The local manager.

Q. Who establishes the salaries of Tropigas employees in Jamaica?

A. The local manager.

Q. Who establishes the working conditions for Tropigas in Jamaica?

A. The local manager.

Q. Who makes the decisions associated with the acquisition of the equipment, plant, office space and other facilities in Jamaica?

A. The local manager.

Q. Who makes decisions concerning the repair and maintenance of office and plant facilities in Jamaica?

A. The local manager.

Q. Who makes decisions concerning the maintenance and acquisition or other handling of equipment used in Tropigas' business in Jamaica?

A. The local manager.

Q. Who determines the hours of operation of Tropigas facilities in Jamaica?

A. The local manager.

Q. Who makes decisions for vacation of the employees in Jamaica?

A. The local manager.

Q. Who establishes and maintains local marketing plans and strategies in Jamaica?

A. The local manager.

Q. Who assures that Tropigas complies with the local government regulations and health standards in Jamaica?

A. The local manager.

Q. Who pays taxes and licensing fees, if any, in Jamaica?

A. The local company.

Q. Who handles the bookkeeping and accounting for the division in Jamaica?

A. The local accounting department.

Q. Who pays the salaries and expenses of the operation of Tropigas, S.A. in Jamaica?

A. The local companies.

Q. Are those salaries and other expenses paid with funds from bank accounts in Jamaica?

A. Yes, sir.

Q. Who handles complaints that customers may make concerning Tropigas operations in Jamaica?

A. The local manager.

* * *

Q. Who is responsible for maintaining--excuse me.--for managing the Tropigas, S.A. personnel in Jamaica?

A. The local manager.

Q. Who is responsible for acquiring the LPG and other products sold by Tropigas, S.A. in Jamaica?

A. The local manager.

Transcript P. 139 Line 1 through P. 142 Line 1

* * *

Q. The purchasing department at Tropigas International does that or has it had a decision-making role as to what type of valve would be used in any particular country, including Jamaica?

A. To my knowledge, no.

Q. Are you aware currently of any department of International that has decision-making powers in reference to what type of valve to use?

A. Local management is the only one.

Transcript P. 148 Line 16 through P. 148 Line 24

* * *

DEPOSITION OF JOSE LUIS COTERILLO
May 25, 1983

Q. And were you providing Jamaica with your technical advice?

A. When requested, yes.

Q. And were you requested to provide this advice both by officers in Tropigas International and officers in Tropigas, S.A.?

. . .

A. The advice was given upon the request of the local people, whenever they required the advice.

Q. Well, who in Tropigas International or Tropigas, S.A. allowed you to answer questions that the local division would ask you regarding technical matters?

. . .

A. Well, it was--It is understood that I am supposed to give technical counsel if requested to do so by the local managers.

Transcript P. 15 Line 14 through P. 16 Line 12

* * *

Q. Have you recommended that the use of valves in cylinders that are used in Jamaica are appropriate at the present time?

A. I haven't been asked to indicate any recommendations regarding the use of those valves and cylinders in Jamaica where there is government regulations controlling that.

Transcript P. 96 Line 6,7,8,15,16,17,18

* * *

DEPOSITION OF GEORGE D. FINLEY
September 15, 1983

Q. They have their own divisions in these different countries?

A. Yes.

Q. And they have their own checking accounts, operating accounts.

A. Yes.

Transcript P. 39 Line 12 through P. 39 Line 17

* * *

DEPOSITION OF NICHOLAS LOPEZ
September 16, 1983

Q. Do you know who in Tropigas, S.A. Corporation makes decisions with reference to the sale, design, storage, maintenance or inspection of L.P. gas products?

A. Tropigas, S.A.?

Q. Yes.

A. Yes.

Q. Who?

A. The local managers.

Transcript P. 79 Line 16 through P. 79 Line 24

* * *

Q. When a division manager makes a purchase, an overseas division manager makes a purchase in that country, is that invoice sent to you for review?

A. No.

Transcript P. 86 Line 1 through P. 86 Line 4

* * *

DEPOSITION OF MIGUEL R. MIGUEL
September 1, 1983

Q. Is it your testimony that you have never purchased any cylinders for Jamaica out of the Coral Gables office?

A. That's right.

Transcript P. 25 Line 17 through P. 25 Line 20

* * *

Q. What other supplies do you purchase out of the Coral Gables office, for Jamaica?

A. We process orders for whatever items are not available locally. We try to assist them in securing those items.

In the case of Jamaica, it is very, very minimal because they have import restrictions and they have currency controls and more than 90 percent of what they require is purchased locally.

Transcript P. 27 Line 20 through P. 28 Line 3

* * *

Q. What are the gross amounts of purchases, in dollars, that you have made on behalf of Tropigas, S.A. in 1982?

. . .

A. We keep records, but we don't maintain those statistics because what we do is, we just process--let's say in the case of Jamaica, it's so minimal that I don't think we have ordered more than $10,000 in the whole thing. I can't remember.

Transcript P. 52 Line 2,3,4,12,13,14,15,16

* * *

DEPOSITION OF THOMAS JOSEPH PERKINS
June 7, 1983

Q. All of these divisions come to Coral Gables when they have a problem, for example, in engineering or plant design?

A. Not necessarily. They have, as I mentioned to you, they have their own operations departments and they also have certain people that have--

You take a place like San Salvador that is a city of 400,000 people and they have-they have all kinds of consulting services there. They can resolve--they have engineering staffs, this and that and the other. You know, Coral Gables is not the only source of consulting for those people, it is one of them.

Transcript P. 120 Lines 13 through 24

* * *

Q. [By Mr. Dickman] Mr. Coterillo doesn't answer engineering questions here in Coral Gables.

A. Yes, he--He usually--If he answers the questions, he is usually there, he goes to the--He will function as a, basically, as an on-sight consultant to the problem or something.

Transcript P. 136 Lines 4 through 9

* * *

Q. When Tropigas International provides a service to Tropigas, S.A., do they charge a fee, an administrative fee?

A. There is an administrative charge levied against all subsidiaries.

Transcript P. 206 Line 25 through P. 207 Line 4

* * *

Q. You have actual knowledge of that?

A. Yes. Jamaica says, if you are a division as opposed to a company, you can remit your profits 100 percent to your parent, however, it doesn't say anything about administrative expenses are a deduction on your profit.

Unfortunately Jamaica is in a position with foreign exchange right now that they have not remitted 1979 profits yet. They have remitted 1978, so Jamaica is five years behind in the remittance of profits.

Transcript P. 212 Line 18 through P. 213 Line 3

* * *

CONTINUED DEPOSITION OF
THOMAS JOSEPH PERKINS
June 29, 1983

Q. Mr. Perkins, on the subject of bank accounts, which Mr. Dickman has been of late discussing each division and subsidiary of Tropigas, S.A. that operates in the Islands of the Caribbean or in Central America has its own banking facilities in its host country, does it not, sir?

A. Yes, that is correct.

Q. That bank account is used to pay the salaries of the people that work in that division or subsidiary?

A. Yes, that's true.

Q. It is used to pay the taxes that are levied by the host country?

A. Yes, sir.

Q. It is used to pay for the acquisition of materials that are obtainable in that country?

A. That's correct.

Q. And for services that are obtainable in that country?

A. Yes, sir.

Q. The bank account which has funds kept in the Bahamas through the Southeast Bank, when that is used to pay for materials for the S.A. subsidiaries or divisions, are those materials that are obtained with the assistance of Tropigas International in the United States?

A. That's correct.

Q. Are they used to pay for anything else through that bank account maintained by the Southeast?

A. You mean for the whole division?

Q. Yes, sir.

A. No. If it is a purchase in the United States that the other--that the local division cannot perform, that is when those funds are used and only then.

Transcript P. 145 Line 10 through P. 146 Line 17

* * *

DEPOSITION OF TOMMIE DEAN PORTER
May 25, 1983

Q. Who makes the recommendations to the local divisions?

A. Nobody makes recommendations to the local divisions. The local divisions originate and that in turn brings it to us.

Q. Who is "us"?

A. To Tropigas, S.A. or to Tropigas International Corporation.

Q. And they ask permission from Tropigas International Corporation or Tropigas, S.A. as to whether or not they can implement a certain policy or procedure in their local operation?

A. No, no, they have the authority.

We delegate the authority to those people to make such types of decisions.

We just monitor the company.

Q. Well, what authority do you delegate to them?

A. I delegate to them that they are as equal as the chief operating officers for those particular branches. They have full authority down there to hire, to fire, et cetera.

The only types of measurements of controls that are put to that is what is normally put through any organization as to the generation of profits, the types of returns that are expected, and what kind of returns we are making on those investments.

Transcript P. 16 Line 9 through P. 17 Line 10

* * *

Q. Now, Tropigas, S.A. is one corporation, is that correct?

A. That is right.

Q. And that is a wholly-owned subsidiary of Tropigas International Corporation.

A. That is right.

Transcript P. 20 Line 15 through P. 20 Line 20

* * *

Q. That doesn't make any sense; a separate management of every company.

A. Of every country. Every one of the companies that we operate in has its own management, has its own accounting staff and they are, in any sense, the central management of that--

Q. Of their location?

A. Of their location. Transcript P. 21 Line 11 through P. 21 Line 18

* * *

Q. Why do you say a very minute amount of purchasing is done through the Coral Gables office for Tropigas, S.A.?

A. Because most of the managers are responsible for their own purchases in that, and they conduct those things themselves, and I say, "a minute amount," because if they can't find something and it is of particular importance to them, they ask for the assistance of Tropigas International. That is not a major function for the people that are handling that.

Transcript P. 43 Line 17 through P. 44 Line 1

* * *

Q. What individual supervises the safety of Tropigas, S.A.?

. . .

A. The safety procedures is done within each one of the divisions or subsidiaries in Tropigas, S.A.

Transcript P. 74 Line 24,25 P. 75 Line 2,3,4

84-704 (2)

Office-Supreme Court,
FILED
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ALEXANDER L. STEVAS
CLERK

No. ____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

BRIEF OF PETITIONER IN REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT

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NO. _____

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Petitioner, Tropigas, S.A., hereby replies to the Brief of Respondents in Opposition to the Petition for Certiorari.

ARGUMENT

A review of the factual statements advanced by Respondents in their statement of the case reveals that Respondents do not contradict the vast majority of the facts advanced by Petitioner. As it is the facts which are most critical to the analysis of the issues raised herein, the failure of the Respondents to contradict Petitioner's facts is significant. 1/

Respondents, in their reply, have challenged only five of the twenty-eight factual statements advanced by Petitioner

---

1/ Petitioner is mindful of the general proposition that the Court will not grant certiorari to review evidence and discuss specific facts. See, United States v. Johnston, 268 U.S. 220 (1925); Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508 (1924); Houston Oil Co. v. Goodrich, 245 U.S. 440 (1918).

and have not directly contradicted any. [2] None of the facts challenged by Respondents are of significant importance to the resolution of the issues before the Court.

Notwithstanding Respondents' failure to respond to Petitioner's facts, this failure has not constrained the Respondents from attempting to distort other facts and mislead the Court by the creation of "facts" which have no factual basis. [3] Conspicuously absent are any

---

2/ Petitioner's statements of fact which have gone unchallenged are listed in the appendix hereto at App. p. 65a. The pagination of the appendix to this Reply Brief is continued sequentially from the appendix to the Petition for Writ of Certiorari.

3/ Respondents have used, word for word, the same "factual statements" which were used in their Answer Brief to the District Court of Appeal and which were the subject of a detailed Motion to Strike which addressed the extensive factual inaccuracies contained in the Answer Brief. This Motion to Strike is reproduced in its entirety in the Appendix herein at App. p. 70a.

quotations or other references to support the factual assertions made by Respondents. 4/

The most egregious and glaring fallacy put forth by Respondents is that Petitioner is a resident of Dade County, Florida. This proposition is advanced without any substantial basis in fact and flies in the face of the undisputed facts.

1. Tropigas, S.A. is a Panamanian corporation which has never solicited business in Florida [App. p. 20a];

2. Tropigas, S.A. owns no real property in Florida. [App. p. 20a];

4/ As a result of Respondent's failure to provide an appendix containing the factual references which allegedly support the factual statements made in the Brief in Opposition, it is impossible for Petitioner to demonstrate that the Respondent's factual statements are not supported by their own references other than by inclusion of the Motion to Strike appended hereto.

3. Tropigas, S.A. has never earned any income in Florida [App. pp. 12a-13a, 29a];

4. Tropigas, S.A. has never been authorized to do business in Florida [App. p. 10a];

5. Tropigas, S.A. has no employees in Florida [App. p. 19a].

Respondents' inaccurate factual assertions notwithstanding, it is difficult to conceptualize how a corporation can be resident in a locale where it has no employees.

Respondents alternatively try to establish "minimum contacts" on the basis of a minute amount of purchases made by Tropigas, S.A. in Florida. Both the

record [5] and the holdings of this Court [6] debunk the effort to show minimum contacts.

Petitioner agrees with the statement made by Respondents that "[A] corporation is deemed to be a resident of the state where it is incorporated and the state where it has its principal place of business. [Brief in Opposition p. 9; Emphasis added]. The undisputed facts demonstrate convincingly that Tropigas, S.A. is not a resident of Florida. [7] These facts amply

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5/ Tropigas, S.A.'s total purchases in Florida for the years 1980-1983 amounted to less than $10,000 and the vast majority of purchase made are made outside of Florida. [App. p. 36a].

6/ Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984); Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923).

7/ Petitioner notes that Respondents provide no citation to any authority defining "resident" or any authority that would support the proposition advanced that Tropigas, S.A. is properly subject to the in personam jurisdiction of the courts of Florida based on S.A.'s activities as a "resident" of Florida.

demonstrate that Tropigas, S.A. does not have sufficient minimum contacts with the State of Florida such that the maintenance of in personam jurisdiction over it does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

The undisputed facts also demonstrate that the Respondents' cause of action arose in Jamaica and not out of Petitioner's activities in the State of Florida. Respondents argue, without any substantive support, that Petitioner's contacts constitute a continuous and systematic general business presence in Florida. 8/ However, this action did not

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8/ Respondents even go as far as to concede that whatever part of its general business Petitioner is carrying on in Florida that this business is "limited." Respondents' Brief in Opposition, p. 14.

arise out of Petitioner's activities in Florida, and this compels the conclusion that Florida cannot constitutionally maintain in personam jurisdiction over Tropigas, S.A.

As this Court in Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437, 445 (1951) stated, the exercise of in personam jurisdiction over a foreign corporation must be "reasonable and just" as that term relates to the activities of the foreign corporation within the forum. 9/ The imposition of in personam jurisdiction over Tropigas, S.A. by the courts of Florida cannot be considered "reasonable and just" where the accident in question occurred in Jamaica, involved citizens and residents of Jamaica, and was allegedly

---

9/ The court in Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S.Ct. 1868, 1872 (1984) quoted this language with approval.

caused by equipment not used or procured in the United States. Permitting in personam jurisdiction under these circumstances will open a floodgate of litigation brought by foreign plaintiffs injured in foreign countries using foreign products against any corporation with the remotest connections with the United States. There is nothing "reasonable and just" about this prospect.

CONCLUSION

Considerations of due process, i.e., individual motions of fair play and substantial justice, compel the conclusion that this action is not properly brought against Tropigas, S.A. in the State of Florida. Certiorari should be accepted and this case be remanded for dismissal in accordance with Helicopteros Nacionales

De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984).

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DATED: November 8, 1984.

CERTIFICATE OF SERVICE

I, CHRISTIAN D. KEEDY, being over the age of 18 years, hereby certify that I have this eighth day of November, 1984, served three copies of the foregoing Brief of Petitioner in Reply to Brief of Respondents in Opposition to Petition For Writ Of Certiorari to the District Court of Appeal, Third District to all counsel of record listed below with their mailing addresses, by mailing said copies in sealed envelopes, first class postage prepaid, deposited at the United States Post Office located at One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida.

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/s/_____
CHRISTIAN D. KEEDY

APPENDIX

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LISTING OF FACTS NOT DISPUTED BY RESPONDENTS

1. The accident alleged occurred in Jamaica.

2. The Respondents were citizens and residents of Jamaica at the time of the accident and are still citizens of Jamaica.

3. The valve, cylinder and gas alleged to have caused the accident were purchased, delivered and used in Jamaica.

4. Respondents have alleged and Petitioner agrees that Jamaican law applies.

5. The majority of the actual and potential witnesses reside in Jamaica, including occurrence witnesses, medical witnesses, background witnesses and technical witnesses.

6. Petitioner has no means of obtaining compulsory process over witnesses

or other evidence located in Jamaica [App. pp. 36a-37a] while Respondents have obtained orders from the Florida trial court requiring Petitioner to produce witnesses and documents from Jamaica in Florida.

7. Petitioner has no means of impleading third parties in Jamaica such as the manufacturer of the gas which is the Jamaican government, or the distributor of the cylinder involved in the alleged accident, which does business solely in Jamaica.

8. TROPIGAS, S.A. has never sold any products in Florida. [App. p. 29a].

9. TROPIGAS, S.A. has never solicited any business in Florida; [App. p. 29a].

10. TROPIGAS, S.A. has never earned any income in Florida; [App. pp. 17a-43a].

11. TROPIGAS, S.A. has not been able to transfer any earnings out of its

Jamaican branch for six years because of currency control in Jamaica. [App. p. 57a].

12. TROPIGAS, S.A. has no employees in Florida; [App. p. 28a].

13. The common officers of TROPIGAS, S.A. and TROPIGAS INTERNATIONAL CORP. are not compensated for any services provided to TROPIGAS, S.A., and these common officers do not run the business activities of TROPIGAS, S.A. [App. pp. 28a, 38a-39a, 61a].

14. TROPIGAS, S.A. has never been authorized to do business in Florida. [App. p. 14a].

15. TROPIGAS, S.A. is not engaged in business anywhere in the United States. [App. pp. 19a, 28a].

16. TROPIGAS, S.A. owns no real property in Florida. [App. p. 29a].

17. The vast majority of purchases made by TROPIGAS, S.A. are made outside of Florida, [App. p. 53a], and the few purchases made through Florida are for items not obtainable elsewhere. [App. p. 63a]. In the years 1980-1983 these purchases did not exceed a total of $10,000. [App. p. 54a].

18. The operations of TROPIGAS S.A. are controlled by its division managers, who are located in each country where it operates and they direct the daily financial and operational activities in each country. [App. p. 28a].

19. TROPIGAS, S.A. reports certain financial data to TROPIGAS INTERNATIONAL CORP. which provides data processing services, but each branch of TROPIGAS, S.A. has its own bookkeeping department and maintains its own separate accounting records. [App. p. 62a].

20. The local division managers are equal to chief operating officers for the operations in each country and are delegated complete authority to run their division independently. [App. p. 61a].

21. Regulations promulgated by the government of Jamaica control the types of valves and cylinders used in Jamaica by TROPIGAS, S.A. [App. p. 50a].

22. Cylinders for use in Jamaica have never been purchased by TROPIGAS, S.A. in Florida. [App. pp. 52a-53a].

23. The limited services provided to TROPIGAS, S.A. by its parent company in Florida are charged to and paid for by TROPIGAS, S.A. [App. p. 56a].

IN THE THIRD DISTRICT COURT OF APPEAL
IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 83-2854

TROPIGAS, S.A.,)

Appellant,)

vs.)

RICHARD ANDERSON, et al.,)

Appellees.)

MOTION TO STRIKE APPELLEES' ANSWER BRIEF

The Appellant, TROPIGAS, S.A., in accordance with Rules 9.300 and 9.410, of the Florida Rules of Appellate Procedure moves to strike the Answer Brief because it contains facts which are not supported by the record. Further, the Appellees' statement of the case and facts is inaccurate, misleading, and in many respects not supported by the Appellees' citations. Finally, the Appellees have included in their factual citations references to undated documents and depositions taken in

other litigation many years before the incident which is the subject of this litigation. Appellees' statement of the case and facts is also argument and must be stricken.

The Appellees' Answer Brief is misleading and the Appendix is incomplete. The Appellees have selected transcript excerpts which are not a fair or accurate presentation of the testimony given by witnesses Appellees deposed concerning the jurisdictional issues which are the subject of this appeal. Additionally, the Appellees have neglected to inform the Court that they have included only small excerpts of witnesses' testimony which has in some cases been taken out of context. Contrary to Appellees' Index to Appendix, not one single complete deposition has been furnished to the Court.

In total disregard of Rule 9.210, Florida Rules of Appellate Procedure, the Appellees have failed throughout important sections of their statement of the case and facts to refer to relevant pages in the record, which in this case is the Appendix. Under Rule 9.130, Florida Rules of Appellate Procedure, each party is required to include in an appendix filed with its brief those portions of the record before the trial court which each party relies upon in its brief. Many statements made by the Appellees with what purport to be citations are in fact unsupported by the portion of the appendix cited. Many of the statements are not only unsupported by any portion of the Appendix, but are simply incorrect. Appellees' flagrant violations of the Appellate Rules infect the entire brief. These violations operate to mislead the

Court and to prevent an orderly and complete appellate review.

The inaccuracies and unfounded statements by the Appellees begin on page 1 of their Answer Brief. There they assert that the trial court held that Tropigas, S.A. has its principal place of business in Coral Gables. This assertion is completely unsupported. Equally unsupported is Appellees' assertion on page 2 of their Brief that the court based its ruling on certain legal precedent. The trial court merely denied Tropigas, S.A.'s Motion to Dismiss without making any type of finding or basing it on any legal principal. (See App.A. 70, Order Denying Motion to Dismiss). 1/ Further, the Appellees' inclu-

---

1/ The Appellant's Initial Brief Appendix will be referred to herein as App.A. ___, and the Appellees' Answer Brief Appendix will be referred to as A.A. ___. Reference to Appellant's Appendix to this Motion will be referred to as M.A. ___.

sion of legal argument in their statement of the case and facts on page 2 is improper.

Continuing on page 2, the Appellees argue that the trial court rejected the Appellant's statement of facts and that evidence before the trial court was conflicting. Both of these assertions are made without any reference to or support in the record. Obviously, these assertions are completely unfounded.

Appellees have enumerated several points in their Statement of the Case and Facts which they assert are supported by the evidence in the record. A review of the more important points 2/ reveals quite the opposite, as will be shown below:

2/ Appellant has not taken issue with all of the factual inaccuracies in the Appellees' Brief because they are too numerous. The issues raised herein relate only to the most serious and glaring factual inaccuracies. The numbered paragraphs herein correspond with the numbered paragraphs in the Appellees' Brief.

1. First, without referring to any point in time, and based upon an undated document and portions of various deposition transcripts, the Appellees assert that Tropigas, S.A.'s Chairman of the Board, President, Treasurer, Secretary and Comptroller are located in Coral Gables, and that these officers work out of offices at 1701 Ponce de Leon Boulevard. However, the Appellees fail to point out that these individuals are also officers of Tropigas International, and that they do not handle the day-to-day operations or the financial and long range planning for Tropigas, S.A. in the office in Coral Gables; rather it is the division managers in each foreign country who are responsible for these activities. (App.A. 66-67). Tropigas, S.A. also has corporate officers in Puerto Rico. (A.A. 15).

Then Appellees, without specifying the pertinent times, claim that 1701 Ponce de Leon Boulevard has been the site of Board of Directors' meetings of Tropigas, S.A. Appellees are trying to create the impression that all meetings were held at this location. This is grossly misleading. The actual testimony is that some of the meetings have taken place in Dade County and when they were in Dade County they were at 1701 Ponce (A.A. 18). Their own citation, at A.A. 150, reveals that the Board of Directors of Tropigas, S.A. met at "various places" including a meeting in Coral Gables; and at A.A. 104, the record shows only that a hypothetical decision posed by Plaintiff's counsel might be made at a Board of Directors' meeting at Ponce. The Chairman of the Board testified that Tropigas, S.A. board meetings would most likely be held in

Puerto Rico (Deposition of Tommie Dean Porter, May 25, 1983, page 39, M.A. 55); in fact, they have been held in Puerto Rico. See, deposition of T. Joseph Perkins, Comptroller, Tropigas International Corp., June 29, 1983, p. 39-40 (M.A. 49). Appellees' assertions are, therefore, merely speculation upon speculation.

2. Here the Appellees' assert that a certain report filed in Puerto Rico states that 1701 Ponce de Leon Boulevard is an office for Tropigas, S.A. However, they fail to point out that the remainder of the address reflected on that report is Hato Rey, Puerto Rico 00919 rather than Coral Gables, Florida, (A.A. 13), and that numerous witnesses whose depositions were taken by the Plaintiff testified that Tropigas, S.A.'s principal place of business is in Puerto Rico. (Deposition of

James I. Bullen, President of Tropigas, S.A., at page 21, M.A. 6; Deposition of Porter, at page 41, M.A. 56). The Appellees also refer to an excerpt of a document filed not by Tropigas, S.A. or its parent, Tropigas International, but by Transway International Corporation. (A.A. 5). This document does not show Tropigas, S.A.'s corporate headquarters to be in Coral Gables, but merely says that "Tropigas" owns the building in Coral Gables in which Tropigas International's executive and general offices are located. It makes no reference to any offices of Tropigas, S.A. This same document points out in an earlier section, (A.A. 2), that the denomination "Tropigas" in that document, for convenience only, refers to Tropigas International Corporation and all

its subsidiaries. 3/ The building at 1701 Ponce in Coral Gables is owned by Tropigas, Inc. of Florida (Deposition of George D. Finley, Financial Manager, Tropigas International Corporation, September 15, 1983, page 74, M.A. 28) and does not house the executive and general offices of Tropigas, S.A. Further, the Appellees fail to face the facts that: Tropigas, S.A. has no employees in the United States, earns no income in the United States, (App.A. 62, 68; Deposition of Jim Bullen at 138, M.A. 21; Deposition of Perkins at 228, M.A. 47) and does not do business in the State of Florida or elsewhere in the United States. (App.A. 63, 68).

3/ This is similar to the practice of using terminology such as ("hereinafter referred to as _____") in pleadings to shorten the name of a referred-to entity, and has no bearing on anything but the document or pleading itself.

3. Appellees begin this point with an admission that the day-to-day operations of Tropigas, S.A. are run by the local managers, but conclude with the unfounded assertion that these managers are hired and fired in Coral Gables. None of the Appendix references referred by the Appellees makes any reference to where managers of the offshore divisions are hired or fired.

4. Here Appellees attempt to describe limitations supposedly imposed on the local managers, and in support, refer the court to two pages of the deposition testimony of Randall Patterson (A.A. 340-341) which have absolutely no relationship to the facts asserted in this point.

5. Then, Appellees grossly misled the court with the implication that all supplies for the operation of Tropigas, S.A. are purchased through 1701 Ponce.

The only supplies which are purchased with the assistance of Tropigas International personnel in Coral Gables are limited to materials which cannot be obtained elsewhere. (Deposition of Porter p. 43 M.A. 57); See also Deposition of Miguel, p. 52, M.A. 38). Additionally Tropigas International charges Tropigas, S.A. for the performance of this service. The factual references used by the Appellees do not explain the minimal quantity of material purchased by Tropigas International as a service to its subsidiary or that the majority of purchases for Tropigas, S.A. are made locally; i.e., in the locale of each division outside the United States. In discovery concerning jurisdictional issues Plaintiffs' counsel made specific inquiry of the President of Tropigas International concerning purchasing as follows:

Q. Where is the purchasing office located for Tropigas, S.A.?

A. In each branch.

Q. Does Tropigas International Corporation make purchases for Tropigas, S.A. out of the Coral Gables branch?

A. A very minute amount of requests, and that is as a service to the branches.

* * *

Q. Why do you say a very minute amount of purchasing is done through the Coral Gables office for Tropigas, S.A.?

A. Because most of the managers are reponsible for their own purchases in that, and they conduct those things themselves, and I say, "a minute amount," because if they can't find something and it is of particular importance to them, they ask for the assistance of Tropigas International. That is not a major function for the people that are handling that.

Deposition of Tommy Dean Porter pp. 43-44; M.A. 57). Most importantly, the Tropigas

International employee in charge of assisting Tropigas, S.A.'s branches in obtaining material in the United States, testified that as best he could recall the total purchases for the S.A. division in Jamaica since 1980 did not exceed $10,000.00. (Deposition testimony of Miguel Miguel at p. 52; M.A. 38). Mr. Miguel further explained as follows:

> Q. What other supplies do you purchase out of the Coral Gables office, for Jamaica?
>
> A. We process orders for whatever items are not available locally. We try to assist them in securing those items.
>
> In the case of Jamaica, it is very, very minimal because they have import restrictions and they have currency controls and more than 90 percent of what they require is purchased locally.

(Deposition of Miguel pages 27, 28, M.A. 36-37). See also, Deposition of Perkins, June 7, 1983, p. 226 (M.A. 46).

Next the Appellees assert that Tropigas, S.A. is represented to be an American company. There is absolutely no support provided by the Appellees for this assertion, and none exists. (A.A. 388). Further, the Appellees' assertion that the "main office copy" of the purchase order is sent to Miami is again completely unsupported in the factual references to which the Appellant's refer the court.

6. Here the Appellees purport to describe the bank arrangements for Tropigas, S.A., begining with an inappropriate factual reference (A.A. 21) to testimony of Robert Stewart taken in 1978 in unrelated litigation, which merely indicates that at that time and previously Tropigas, S.A. had checking or savings accounts in Dade County. However, he went on to testify that he did not know at the time of his deposition whether such

checking accounts were maintained by Tropigas, S.A. (A.A. 21). The use of testimony taken in unrelated litigation in an attempt to support the facts asserted by the Appellees in this case is completely inappropriate. Further, the Plaintiffs' factual references here are misleading, as they fail to explain properly the nature of the banking relationship which S.A. has with the Southeast First National Bank. Appellees should well know this account is actually not maintained in the Southeast First National Bank, but is maintained in a corresponding bank in Nassau and invested in Eurodollars. (Deposition of George Finley p. 41, A.A. 292; Deposition of Randall Patterson, p. 87-88; M.A. 40-41). The funds in this account are kept outside of the United States, in Nassau, and only funds sufficient to cover purchases made

by Tropigas, S.A. in the United States or to pay dividends to Tropigas International are brought into the United States. (Deposition of T. J. Perkins, June 29, 1983, pp. 145-147, M.A. 51-53). The bank accounts maintained by Tropigas, S.A. in Jamaica and other foreign divisions of Tropigas, S.A. are controlled and supervised by the local division managers. (Deposition of Bullen, pp. 18, 49-50; App.A. 84-85; Deposition of Finley, p. 37, A.A. 289).

8. The Appellees suggest that all profits from Tropigas, S.A. are deposited in a checking account at the Southeast Bank; this is inaccurate and not supported by the references given by the Appellees. The profits remitted by the Tropigas, S.A. divisions which are able to remit profits are deposited in an offshore account invested in Eurodollars in Nassau. See

Deposition of Finley, supra at 41. In fact, the last profit received from Tropigas, S.A.'s division in Jamaica was for the year 1978 (Deposition of Perkins, June 7, 1983, p. 212-214, M.A. 43-45).

10. Appellees' next attempt to assert that the dividend decisions for Tropigas, S.A. are made at 1701 Ponce. However, there is no support for that assertion in the text referred to by Appellees.

11. Appellees characterizations here are classic examples of the devious subterfuge that Appellees have engaged in concerning the material facts of this case. By deleting relevant portions of the record, and resorting to inference and speculation, Appellees claim that "contracts for Tropigas, S.A. are negotiated from 1701 Ponce" and that "some of these contracts involve the acquisition of

valves and cylinders." In support of this position Appellees initially refer the court to a page in a deposition taken in 1978 in which there is testimony that it was "possible" that a contract to purchase a truck to be used in Honduras had been negotiated in Florida. (A.A. 31). This record reference appears to refer to a single contract without any explanation as to what type of a contract it is or whether it refers to contracts in general. Not only is this reference ambiguous, it is irrelevant to this case, and therefore, inappropriate. The relevant testimony to be considered by the court is found on page 75 of the Appellees' Appendix. The President of Tropigas, S.A., Mr. Bullen, there testifies that only Mr. Martin, Tropigas, S.A.'s Executive Vice President and Assistant Treasurer, who lives and works in Puerto Rico (A.A. 15), and the

division managers, negotiate contracts for Tropigas, S.A. (A.A. 75). Bullen further testifies that:

> I sometimes become involved in contracts but I never fully negotiate them. These are managers' duties or Mr. Martin's.

(A.A. 75). Roberto Rodezno's testimony, also relied upon by Appellees in support of this point (A.A. 117-118) is limited to an explanation of his involvement in negotiations with the government of Guatamala concerning prices and volume of gas to be supplied. It has absolutely nothing to do with the acquisition of valves and cylinders. (See Deposition of Roberto Rodezno, 21-24, M.A. 61-64). That this is not clear from Appellees' Appendix is not surprising, since they have deleted the intervening pages of Mr. Rodezno's testimony which explains this fact.

Next Appellees mislead the court in suggesting that all purchase orders from

foreign divisions are processed by Tropigas International in Coral Gables Ponce and are reviewed here for technical accuracy. Contrary to this assertion, however, the testimony of Nicholas Lopez referred to by the Appellees (A.A. 418-422), clearly establishes that the only purchase orders reviewed at 1701 Ponce are purchase orders for material from American suppliers which are of a technical nature. See also, Deposition of Miguel (A.A. 397). Appellees' factual assertions in this point are substantially misleading, because they fail to bring to the court's attention that there is no technical review of purchase orders prepared by division managers for purchases outside of the United States. This point is clearly made in the testimony of Mr. Lopez (omitted from Appellees' Appendix) as follows:

Q. When a division manager makes a purchase, an overseas division manager makes a purchase in that country, is that invoice sent to you for review?

A. No.

(Deposition of Lopez, p. 86, M.A. 33). The President of Tropigas, S.A., Mr. Bullen, clearly testified that contracts for Tropigas, S.A. were not negotiated in Coral Gables as follows:

Q. So, it is your testimony that no contracts are negotiated at the Ponce office for Tropigas, S.A.?

A. Not to my knowledge.

Q. Who would have that knowledge?

A. Well, as I don't think that it is being done, I don't think that anyone would?

(Deposition of Bullen at p. 60, M.A. 9). Appellees then advance the proposition that the procedures concerning record-keeping originate in Florida, and that Tropigas, S.A.'s President takes some

steps when local divisions do not comply with record-keeping requirements. These "facts" are wholly unsupported and are deceiving. Pages 47 and 48 in the Appellees' Appendix are cited in an attempt to support this proposition and are excerpts of the testimony of Robert Stewart in which he testifies to the contrary that the record-keeping policies of Tropigas, S.A. have been developed ". . . in a variety of ways . . . over a period of time . . ." with people throughout the Tropigas organization making suggestions for implementation of policies. He also indicates that the record-keeping procedures are not necessarily uniformly followed by the different divisions. (A.A. 47-48). The Appellees follow with a reference to testimony of James Bullen (A.A. 79-82) which does not support their proposition, but establishes to the con-

trary that many record-keeping practices originate in the Tropigas, S.A. divisions so as to comply with local regulations. 4/

Id., at p. 38-39, M.A. 7-8:

> A. No, there may be some guidelines in our office especially for accounting reports, but the policies and the recordkeeping is done by guidelines established by the local manager in accordance with local legal requirements.

12. Appellees' struggle to assert that Tropigas, S.A. maintains an address in Coral Gables, taking out of context the testimony of Mr. Miguel concerning the contents of a purchase order. Mr. Miguel testifies that the purchase order has both the post office box and street address in Coral Gables. However, this witness also testifies as follows:

4/ Of course the deposition page explaining this has again been omitted from the cited portion of Appellees' Appendix.

> Q. So Tropigas, S.A., what is their address in Coral Cables?
>
> A. As far as I know, there is no address for a company "Tropigas, S.A." We are not conducting business in the name of Tropigas, S.A. in Coral Gables.

(Miguel Deposition pp. 18-19; A.A. 388-389). Further, Mr. Porter, the President of Tropigas International testified as follows:

> Q. Does Tropigas, S.A. maintain a P. O. box in Coral Gables?
>
> A. Not to my knowledge.
>
> Q. A mailing address in Coral Gables?
>
> A. Not to my knowledge.

(Deposition of Tommy Dean Porter p. 95, M.A. 59a); See also, App.A. 67). The only reference to a post office box or mailing address for Tropigas, S.A. in Coral Gables arises from purchase orders which are used by Tropigas International

to facilitate those few purchases by Tropigas, S.A. of materials in the United States from suppliers who may be reluctant to sell or ship materials to a company in a foreign country. (See Deposition testimony of Miguel p. 18; M.A. 35).

13. Appellees' here claim that the only engineers employed to give technical advice to the divisions of Tropigas, S.A. are located at 1701 Ponce. This is a fallacy. Although Jose Coterillo and Nicholas Lopez are engineers employed by Tropigas International who provide consulting services when requested to divisions of Tropigas, S.A., these divisions are not required to seek the assistance of these engineers. As Appellees are fully aware, the divisions of Tropigas, S.A. are at liberty to seek technical advice and engineering assistance from sources available in their country.

A. Every local division has access to -- in essence they do sometimes contact the local technical people, the government.

* * * * * * *

Q. So, whatever technical engineering advice is given to the various divisions of Tropigas, S.A., comes out of your office, is that right?

A. Not necessarily. . . . I mentioned before that sometimes the managers have a means of acquiring technical information locally, not necessarily from Miami.

(Deposition of Coterillo A.A. 445-446). See also Deposition of Lopez at p. 62, (omitted from Appellees' Appendix), M.A. 30). Appellees also assert that engineers at 1701 Ponce do "quality control" work in the different divisions of Tropigas, S.A. There is no support for this assertion in the record or the material cited by the Appellees (A.A. 442-443). Mr. Coterillo testified that only if he was asked to

provide quality control services would he do so. He goes on to point out that he has not made recommendations concerning the use of valves and cylinders in Jamaica and that he has not been asked to make recommendations concerning valves and cylinders in Jamaica, because there are government regulations controlling the use of those items. (A.A. 443).

Finally, the Appellees declare that approval of engineers employed by Tropigas International is necessary before a division of Tropigas, S.A. can purchase a new type of valve or equipment. This is directly contrary to the testimony of Mr. Lopez, who explained that when consulted by a division he only makes suggestions, and does not specifically approve or disapprove. (A.A. 415-416). This is echoed in the Deposition of Anthony Autorino, September 15, 1983, who testified that the

decision concerning the type of valve to be used in 1981 rested with the division manager. (Deposition of Autorino, p. 28, M.A. 4).

14. Appellees contend that the Tropigas International engineers, who they allege provide consulting services to Tropigas, S.A., only provide those services in South Florida. The evidence however is that most of the engineering assistance is provided to the divisions in the countries where they operate. For example, Jose Coterillo testified:

> Q. So, you do perform services in Coral Gables for the benefit of these various divisions of Tropigas, S.A.?
>
> A. No, not entirely. Most of the services are performed in the different divisions, as I go there.

A.A. 431, see also, A.A. 459-460; and Deposition testimony of Autorino pp. 17-18; M.A. 2-3). Moreover, it is an uncon-

tested fact that Tropigas, S.A. is charged for these consulting services when they are used. (Deposition of Jim Bullen, p. 73, 137, M.A. 11, 20).

Another of Appellees' completely unfounded contentions is that operational goals are set at 1701 Ponce on an annual basis for the divisions of Tropigas, S.A. Rather, the profit plans, and projections or goals included therein, are established or "set" by the individual division managers and merely presented or discussed at the profit plan meetings.

> Q. What are profit plans and who establishes these plans?
>
> A. Well, the profit plans are what the manager expects his division will perform or come out with in the coming year and they are done basically by the manager and his local staff in each division.

* * * * * *

Q. I don't understand what the function was in Miami with reference to the profit plans.

A. Basically to tell them what we expected to do.

* * * * * *

Q. And before you made your presentation, your presentation was not authorized or approved by anyone including the president of Tropigas, S.A.

A. No.

(Deposition of Roberto Redezno pp. 35-37, M.A. 65-57, noticeably omitted by Appellees). And the president of Tropigas International confirmed that division managers set their own goals:

Q. Who sets the profit goals for the division?

A. The profit goals are set by the division managers.

* * * * * *

Q. How about the profit plan meetings that occur here in Coral Gables with the managers of the various divisions of Tropigas, S.A.,

> isn't that where the profit goals are formulated?
>
> A. No, sir.

(Deposition of Tommie Dean Porter, p. 47; M.A. 59).

15. Appellees' next proclaim that no one outside of Florida has authority over more than one local operation of Tropigas, S.A. This is profoundly inaccurate and is contradicted by the Appellees' next statement which points out that the Puerto Rico office of Tropigas, S.A., negotiates supply contracts which are applicable to more than one local operation. The first reference cited by the Appellees (A.A. 38-39) also reveals the inaccuracy of the Appellees' initial assertion:

> Q. You have told me, sir, that there are various divisions of Tropigas throughout the Caribbean and throughout Central America and that you as president of Tropigas, S.A., are the only person in charge of all these divisions.

A. Yes.

Q. Other than your vice presidents and other people?

A. Right.

(Deposition of Robert Stewart A.A. 38-39).

Appellees' next appendix reference is equally contradictory to their position. Mr. Porter indicated:

Q. When the monitoring process of the various divisions of Tropigas, S.A. uncovers a weakness in one of the divisions, what officer of Tropigas, S.A. has the duty to see that these weaknesses are attempted to be corrected?

A. It would either be Mr. Jim Bullen or Mr. Martin Velez.

Q. Does Mr. Velez monitor the overall operations of all the different divisions of Tropigas, S.A.?

A. Not all of them. Some of them, yes.

(A.A. 190). Appellees' reference to Appendix pp. 215-216 is equally unsupportive of this proposition.

Finally, Appellees try to say that the president of Tropigas, S.A. must approve or disapprove the decisions of the local managers. This is false. The testimony of the Chairman of the Board of Tropigas, S.A. establishes that full authority is delegated to division managers of Tropigas, S.A.:

> Q. Who makes the recommendations to the local divisions?
>
> A. Nobody makes recommendations to the local divisions. The local divisions originate and that in turn brings it to us.
>
> Q. Who is "us"?
>
> A. To Tropigas, S.A. or to Tropigas International Corporation.
>
> Q. And they ask permission from Tropigas International Corporation or Tropigas, S.A. as to whether or not they can implement a certain policy or procedure in their local operation?
>
> A. No, no, they have the authority. We delegate the

authority to those people to make such types of decisions. We just monitor the company.

Q. Well, what authority do you delegate to them?

A. I delegate to them that they are as equal as the chief operating officers for those particular branches. They have full authority down there to hire, to fire, etc.

(A.A. 173-174, emphasis supplied). Mr. Bullen also testified as follows:

Q. So, you, as president of Tropigas, S.A., supervise the various managers and the various divisions of Tropigas, S.A. around the Caribbean and Latin America?

* * * * * * *

A. No, sir, I don't supervise them. I receive the reports - they advise me what is going on at times but I don't get into the nitty-gritty and supervise, no.

They receive no supervision from me.

(A.A. 72).

16. In Appellees' last attempt to pervert the facts Appellees include a telex concerning a new addition to the Tropigas International staff in 1982, over a year after this accident. On that point, appellees conveniently ignore that Mr. Bullen testified, at page 135 of his deposition (M.A. 19), that this addition was a new position. It did not even exist at the time of the alleged incident, and is irrelevant to this Court's consideration.

What then follows is a string of activities which are supposedly carried on by Tropigas, S.A. in this forum, followed by another string of citations which only can be said to support these allegations in the fertile imagination of Appellees. However, an examination of these citations reveals that there simply is no support for these propositions. For example,

Appellees assert that valves and cylinders are repaired in the United States. Their first actual citation is to the 1983 deposition of Robert Stewart, who testified that he was not sure whether Tropigas, S.A. had cylinders or valves repaired in the United States. (A.A. 52). Then, at A.A. 392, also cited by Appellees, we find that Miguel, head of the Tropigas International purchasing department, testified as follows:

> Q. Is it your testimony that you have never purchased any cylinders for Jamaica out of the Coral Gables office?
>
> A. That's right.

Regarding Appellees' claim that approval or disapproval for purchase of valves must be obtained from Coral Gables, Nicholas Lopez testified to the contrary:

> Q. Then would you give your approval or disapproval of a particular valve that was

wanted to be used by Tropigas, S.A.?

A. No.

(A.A. 416).

With regard to the responsibility for safety, rather than the president of Tropigas, S.A. being responsible for safety in the offshore divisions, as Appellees have represented, we find that it is the local managers instead. Thus, Mr. Bullen testified, at pages 94-95 of his deposition, as follows:

Q. Is there one individual in Tropigas, S.A. responsible for the safety throughout the division?

A. Responsible for the safety?

* * * * * *

A. No, the local manager is responsible for safety.

* * * * * *

Q. There is no one individual that is responsible for safety in all of the divisions?

A. That is correct.

(M.A. 14-15). And, at page 97 of his deposition, Bullen further testified:

> Q. I mean, as president of Tropigas, S.A., you must rely on the safety procedures established by Tropigas International through Mr. Lopez and the operations managers in the various divisions of Tropigas, S.A., is that correct?
>
> * * * * * * *
>
> A. No, I rely on the safety procedures established in the country in accordance to the regulations in these countries.
>
> I rely on the local manager to assure that these procedures are indeed applied.

(M.A. 16). With regard to the repair of cylinders used in Jamaica, which Appellees assert is done in the United States, Mr. Bullen testified as follows on page 64 of his deposition:

> Q. Does Tropigas, S.A. arrange for the repair of cylinders used in Jamaica in the United States?

A. No.

Q. Has that ever been done, to your knowledge?

A. To my knowledge, I don't know.

Q. You are unaware of any of the cylinders that are used in Jamaica being repaired in the United States?

A. I am completely unaware.

Q. Who would be involved in such affairs in either Tropigas International or Tropigas, S.A.?

A. I really don't know. It sounds so far out, I don't know.

(M.A. 10). See also the Deposition of Nick Lopez, who testified:

Q. Where are the cylinders used in Jamaica repaired?

A. The hundred pound cylinders, they are repaired in an outside shop.

Q. In Jamaica or outside Jamaica?

A. In Jamaica."

(Lopez Deposition, p. 80; M.A. 32). With regard to who selects the valves that are to be used in their own individual countries, rather than being approved here, as Appellees claim, again we find that it is the responsibility of the division managers. Thus, Mr. Bullen testified at pages 87-88 of his deposition, as follows:

> Q. Who decides what valves are to be used on the 25 pound tanks in Jamaica?
>
> A. The Jamaican manager.
>
> Q. Has he always performed that function to your knowledge?
>
> A. To my knowledge, yes."

(M.A. 12-13). Appellees' assertions to the contrary notwithstanding, Tropigas, S.A. in Jamaica purchases its cylinders in Jamaica, not the United States. Mr. Bullen confirmed this at pages 103-104 of his deposition:

Q. Where is the Tropigas Jamaica purchasing their cylinders at the present time?

A. From another cylinder manufacturer in Jamaica.

Q. What manufacturer is that?

A. It is a local company. I don't recall the name.

Q. Who oversees those purchases?

A. The local manager.

Q. Who supervises the local manager in those purchases?

A. He works jointly with the local operations manager.

Q. Do you oversee these purchases?

A. No.

Q. Who determines how many cylinders should be purchased and when?

A. The local manager.

(M.A. 17-18). And, at page 148 of his deposition, Mr. Bullen again explains that it is local management that has the sole

decision-making power over what type of valve to use in its operation:

> Q. The purchasing department at Tropigas International does that or has it had a decision-making role as to what type of valve would be used in any particular country, including Jamaica?
>
> A. To my knowledge, no.
>
> Q. Are you aware currently of any department of International that has decision-making powers in reference to what type of valve to use?
>
> A. Local management is the only one.

(M.A. 26). Mr. Bullen is not the only one to testify as to these matters. Nick Lopez testifies at pages 79-80 of his deposition:

> Q. Do you know who in Tropigas, S.A. Corporation makes the decisions with reference to the sale, design, storage, maintenance or inspection of L.P. gas products?

* * * * * *

A. The local managers.

Q. Do you know anybody else?

A. Besides the local managers?

Q. Yes.

A. No.

(M.A. 31-32).

Rather than the picture Appellees have attempted to paint, we find the true picture in the testimony of Jim Bullen, which has been carefully excluded from the Appellees' Appendix:

> Q. Mr. Bullen, referring to the Jamaican division of Tropigas S.A., who makes the decisions concerning hiring and firing of employees in that Jamaican division?
>
> A. The local manager.
>
> Q. Who selects the distributors of Tropigas products for the S.A. division in Jamaica?
>
> A. The local manager.

* * * * * *

Q. Who determines the manner of local distribution of Tropigas products in Jamaica?

A. The local manager.

Q. Who selects retail outlets for Tropigas products in Jamaica?

A. The local manager.

Q. Who establishes the salaries of Tropigas employees in Jamaica?

A. The local manager.

Q. Who establishes the working conditions for Tropigas in Jamaica?

A. The local manager.

Q. Who makes the decisions associated with the acquisition of the equipment, plant, office space and other facilities in Jamaica?

A. The local manager.

Q. Who makes decisions concerning the repair and maintenance of office and plant facilities in Jamaica?

A. The local manager.

Q. Who makes decisions concerning the maintenance and acquisition or other handling of equipment used in Tropigas' business in Jamaica?

A. The local manager.

Q. Who determines the hours of operation of Tropigas facilities in Jamaica?

A. The local manager.

Q. Who makes decisions for vacation of the employees in Jamaica?

A. The local manager.

Q. Who establishes and maintains local marketing plans and strategies in Jamaica?

A. The local manager.

Q. Who assures that Tropigas complies with the local government regulations and health standards in Jamaica?

A. The local manager.

Q. Who pays taxes and licensing fees, if any, in Jamaica?

A. The local company.

Q. Who handles the bookkeeping and accounting for the division in Jamaica?

A. The local accounting department.

Q. Who pays the salaries and expenses of the operation of Tropigas S.A. in Jamaica?

A. The local companies.

Q. Are those salaries and other expenses paid with funds from bank accounts in Jamaica?

A. Yes, sir.

Q. Who handles complaints that customers may make concerning Tropigas operations in Jamaica?

A. The local manager.

Q. Who is responsible for maintaining--excuse me--for managing the Tropigas S.A. personnel in Jamaica?

A. The local manager.

Q. Who is responsible for acquiring the LPG and other products sold by Tropigas S.A. in Jamaica?

A. The local manager.

(Deposition of Jim Bullen, pp. 139-142, M.A. 22-25). Thus, Appellees' "statement of the case and facts" is nothing but sheer argument, for which Appellees have reached outside the record, and their brief must certainly be stricken.

MEMORANDUM OF LAW

Rule 9.210(c), Florida Rules of Appellate Procedure provides that Appellees' Answer Brief shall be prepared in the same manner as the Initial Brief. Section (b)(3) of that rule, regarding initial briefs provides:

> References to the appropriate pages of the record or transcript shall be made (emphasis added).

Appellees have utterly disregarded the dictates of this rule, and their brief should be stricken.

In Dayton Tire & Rubber Co. v. Davis, 348 So. 2d 575, (Fla. 1st DCA 1977), quashed and reversed on other grounds, 358 So. 2d 1339 (Fla. 1978), the court explained the purpose of the precedessor to Rule 9.210(b)(3) requiring reference to pages of the record and suggested a sanction for its violation:

> The purpose of that rule is to guide the judges of the court, when reading the briefs, to the relevant portions of the record to resolve conflicts and confusion in the assertions contained in the briefs. It would not be inappropriate, upon a finding of a flagrant disregard of that rule, for the court to strike the parties' brief.

The rule also helps alert the parties and the appellate court to attempts to go outside the record. Accordingly, the Florida Supreme Court in Pawley v. Pawley, 37 So. 2d 247 (Fla. 1948) granted a motion to strike a brief because the "history of the case" which, under Supreme Court Rule

20 was to be limited to a recital of facts with appropriate references to the transcript, contained argument and undue elaboration relating to matters in controversy.

Statements made in Appellees' brief which are flatly contradicted in the actual record or are simply unsupported there should be stricken as an attempt to go outside the record. In Maistrosky v. Harvey, 133 So. 2d 103 (Fla. 2d DCA 1961), the court granted appellant's motion to strike appellee's brief for reciting matters which were not contained in the record. See also, Sheldon v. Tierman, 147 So. 2d 593 (Fla. 2d DCA 1962); Foge v. Mirmelli, No. 80-1680 (Fla. 3d DCA, Order Striking Brief filed May 6, 1981), M.A. 68.

Inconsistencies between the statements made in Appellees' brief and the appendix must cause this Court concern.

The court in Seaboard Air Line Railroad Company v. Harnes, 269 So. 2d 392 (Fla. 4th DCA 1972), stated that in the preparation of an appellate brief, counsel should never portray a factual situation to the court as having been established without qualification by the record when the evidence in the record conflicts with that portrayal.

It is an equally well established rule that Florida's appellate courts will not hesitate to strike entire briefs for failure to cite to pages of the record. See, e.g., Davis v. Sails, 306 So. 2d 615 (Fla. 1st DCA 1975). Also, once this Court determines that the brief contains misstatements of the record or testimony, which are not within the record on appeal, striking the offensive portions of the appellate brief may be appropriate. Cf. Raybon v. Burnette, 135 So. 2d 228, 229-230 (Fla. 2d DCA 1961).

Appellees' initial brief violates the rules and principles essential for orderly appellate review. Many statements of "fact" are made without reference to the attached appendix; many statements are entirely unsupported by the appendix, or are contradicted by the same; many of the statements cited are wholly unsupported by the pages referred to; and finally, many misleading and clearly false assertions are made.

Briefs such as the one complained of in this motion were striken by the court in Axtell v. Lyons, 105 So. 2d 610 (Fla. 1st DCA 1958). In Axtell, the court noted that although the violations complained of had not caused appellee to suffer any material detriment at that time, the language of the rules governing preparation of briefs on appeal was clear and observance of the rules was essential to

the orderly functioning of the courts. Id. at 611. Appellees' disregard for the dictates of the appellate rules in the case at bar has already caused, and will continue to cause, undue labor for both this Court and Appellant. It should not be condoned.

CONCLUSION

The flagrant disregard shown here by Appellees epitomizes the purpose of the appellate rules. The subtle danger of improperly swaying this Court with matters that are outside the record or that are not accurate makes Appellees' efforts even more deplorable. Here the Appellant and the Court must search the Appendix from the beginning to end to discover that "facts" stated by Appellees are not supported by the Appendix to which Appellees refer the court.

In an effort to develop a factual basis for jurisdiction, the Appellees have taken eighteen depositions in this case, transcripts of which contain approximately 2,000 pages of testimony. In the Appendix which the Appellees have filed in support of the "facts" they allege or assert in the Answer Brief, they have included various documents and exerpts of some depositions. However, some of these depositions were taken years before the incident which gives rise to this lawsuit and were not taken in this case. The Appellees' Appendix includes numerous other exerpts of testimony which do not fairly present the evidence given by the witness. Further, the Appellees fail to alert the Court, even in the Index to the Appendix, that they are referring only to small portions of the depositions. In many cases, particularly with reference to

the testimony of James Bullen, Tommie Dean Porter, and Joseph Perkins, it is not possible to verify the accuracy of the Appendix, because the Appellees have failed to include the deposition page numbers. The entire form and presentation of the material in the Appellees' Appendix is misleading and improper.

Because the Appellees rely extensively on numerous exerpts of deposition testimony, they should be required to submit complete copies of the deposition testimony relied upon in their Appendix, so that the Court may be properly apprised of the complete testimony of these witnesses. Further, the deposition transcripts offered concerning testimony taken in other litigation several years before the incident which is the subject of this litigation should be stricken and expunged from the record.

The inaccuracies and misrepresentations in the Appellees' statement of the case and facts are pervasive and infect their entire Brief. Violations of the Florida Rules of Appellate Procedure may be punished by the elimination of the offending portions of the brief or, when such violations pervade the entire brief, by striking the brief as a whole. Rule 9.410, Florida Rules of Appellate Procedure. Such a sanction is the appropriate action here.

WHEREFORE, Appellant respectfully requests that this Court strike Appellees' initial brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of February, 1984 to: Robert J. Dickman, P.A., Suite 302, 4675 Ponce de Leon Boulevard, Coral Gables, Florida 33146; Robert J. Black, Esquire, 420 South Dixie Highway, Coral Gables, Florida 33146; Sam Daniels, Esquire, 1414 duPont Building, 169 East Flagler Street, Miami, Florida 33131; and Debra L. Brady, Esquire, 169 East Flagler Street, Miami, Florida 33131.

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84-704 (3)

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CASE NO. 65,313

in the Supreme Court of the United States

OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

vs.

RICHARD ANDERSON et al.,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

RESPONDENTS' BRIEF IN OPPOSITION

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On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Richard Anderson, Percival Anderson, Melva Anderson, Trevor Anderson and Sharon Anderson, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the opinion of the Third District Court of Appeal of Florida in this case. That opinion is reported at 447 So.2d 338.

STATEMENT OF THE CASE

This petition for certiorari arises out of a personal injury action in which respondents, the Andersons, are seeking compensation for the serious injuries they received in a liquid propane gas explosion caused by a defective lpg cylinder and/or valve provided to them by petitioner, Tropigas, S.A. The Andersons are Jamaican citizens, and the explosion occurred in Jamaica. However, because the Andersons were so severely burned, they were required to seek medical attention in the United States and now reside in Dade County, Florida. (A.A. 469, 470).

The Andersons filed this suit in Dade County against Tropigas International Corporation (not a party to this petition) and its wholly owned subsidiary, Tropigas, S. A. Tropigas, S.A. moved to dismiss for lack of personal jurisdiction. In response to this motion, the Andersons took 22 depositions of the officers and personnel of Tropigas, S.A., who are located in Coral Gables, Dade County, Florida, in order to ascertain the true jurisdictional facts of this cause. Based on these depositions, the Andersons argued that Tropigas, S.A. actually has its principal place of business in Dade County and therefore it is subject to suit there, no matter where the cause of action arose. The trial court accepted respondents' position and denied the motion to dismiss. This ruling was affirmed upon appeal. The Florida Supreme Court refused to accept jurisdiction.

The evidence which supports the finding that Tropigas, S.A. has its principal place of business in Coral Gables shows, among other things, the following:

1. Tropigas, S.A.'s Chairman of the Board, President, Treasurer, Secretary and Comptroller are located in Coral Gables. All of these corporate officers work out of offices at 1701 Ponce de Leon Boulevard. (A.A. 15, 41-41A, 68, 70, 146-147, 178, 212-214)[1] 1701 Ponce was also the site of Board of Directors' meetings of Tropigas, S.A., at all times material. (A.A. 18, 104, 150).

2. 1701 Ponce de Leon Boulevard is listed as the principal office in a form filed by Tropigas, S.A., in Puerto Rico. (A.A. 13). It is also listed as the corporate headquarters of Tropigas, S.A., in its parent's 10K filing with the SEC. (A.A. 5).

3. The day to day operations of the different offshore divisions are run by local managers who are hired and fired by the President of Tropigas, S.A. in Coral Gables. (A.A. 97, 158-159, 174, 382-383).

4. These local managers are subject to limitations as to how much money they can spend before approval from the President at 1701 Ponce is required. (A.A. 121-122, 374-378).

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[1]"A.A" refers to Appellees' Appendix which was the appendix supplied by respondents to the Third District Court of Appeal of Florida. Florida Rule of Appellate Procedure 9.130(d) states that in proceedings to review non-final orders, such as the one issued here, "a record shall not be transmitted to the court." Rather, the parties provide appendices which contain those portions of the record deemed necessary to an understanding of the issues presented. Fla.R.App.P. 9.130(c) and 9.220. Unless otherwise indicated, all emphasis is supplied.

5. Supplies are purchased in the United States and Florida out of 1701 Ponce for Tropigas, S.A.'s offshore operations. (A.A. 27, 30, 119-120, 390-391). At times it is represented to some suppliers that Tropigas, S.A. is an American company with a Coral Gables address. This is done so that the suppliers will deal with and ship to Tropigas, S.A. (A.A. 388). Purchase orders of Tropigas, S.A. have the Coral Gables address printed on them and the "main office" copy of these purchase orders is sent to 1701 Ponce and retained there. (A.A. 389, 396, 410).

6. Tropigas, S.A., maintains a checking account and a Nassau Eurodollar account at Southeast First National Bank of Miami. There are no other accounts for all of Tropigas, S.A. anywhere else. Each division has its own local bank account which is also overseen by the personnel at 1701 Ponce. (A.A. 21, 288-290, 291, 298).

7. The statements of the Southeast account are sent to 1701 Ponce. (A.A. 33, 275-276, 282-283, 299). The signatories on these accounts are located at 1701 Ponce. (A.A. 33, 255-256, 339). Mr. Finley, the Assistant Comptroller for Tropigas, S.A., is located at 1701 Ponce and solely handles the transfer of funds into and out of Tropigas, S.A.'s investment account. (A.A. 273, 286, 289-293, 310).

8. Profits from the different Tropigas, S.A. divisions are sent by check or wire transfer to the accounts at Southeast. (A.A. 26, 84, 248, 293, 306-307, 343). The money in the checking

account is then used to pay for goods purchased for Tropigas, S.A. and to pay Tropigas International Corp. the administrative fees and dividends owed it by Tropigas, S.A. (A.A. 27, 249-251, 252, 271, 294).

9. Financial statements of the different offshore divisions are consolidated at 1701 Ponce and are reviewed there by Tropigas, S.A.'s officers. (A.A. 24, 51, 65-66, 76-77, 101-102, 176, 188, 348). Copies of the general ledgers of all the divisions are maintained at 1701 Ponce. (A.A. 217-218).

10. Major capital acquisitions and sales by the divisions must be approved by the President and Board of Directors of Tropigas, S.A. (A.A. 104, 127-139, 163-164, 184-185). The decision of what dividend the corporation will pay is also made at 1701 Ponce. (A.A. 155).

11. Contracts for Tropigas, S.A. are negotiated from 1701 Ponce. Some of these contracts involve the acquisition of valves and cylinders. (A.A. 31, 54, 75, 117-118, 393). Purchase orders are reviewed at 1701 Ponce for technical accuracy. This includes orders which originate in the various offshore divisions. (A.A. 397, 402, 418-422, 424-426). Also, record keeping policies are instituted through the 1701 Ponce office for all of the divisions. If the divisions don't comply with these policies, the President of Tropigas, S.A. gets involved. (A.A. 47-48, 79-80, 81-82).

12. Tropigas, S.A. maintains both a street address and a post office box in Coral Gables. (A.A. 389, 409, 410).

13. The only engineers employed to give technical advice to all divisions of Tropigas, S.A. are located at 1701 Ponce. (A.A. 414, 429-430, 433, 438-439, 445-446). These engineers do quality control in the different divisions. (A.A. 442-443). They must also give their approval before an offshore division can purchase a new type of valve or other equipment. (A.A. 113, 398-399, 415-417).

14. The President of Tropigas, S.A. and the local managers consult with these engineers at 1701 Ponce. The managers also travel to 1701 Ponce to consult with the President at his office. (A.A. 61-62, 423, 445-446, 448, 458, 460). Yearly profit plan reviews were conducted annually at 1701 Ponce to set operational goals for each of the offshore divisions. These goals include amount and type of sales expected to be made, expenses incurred, expansion expected, etc. (A.A. 87, 124-127, 203-204, 355). If, during the year, a division did not meet its profit plan, the President of Tropigas, S.A. would review that division. He also establishes incentive programs for the managers to encourage them to meet their profit plans and he is the one who gives them raises. (A.A. 176, 208-209, 315).

15. No one outside of Florida has any authority over more than one local operation. The Puerto

Rico office does negotiate supply contracts for some of the divisions, but not all of them. (A.A. 38-39, 189-191, 215-216). The local managers report to the President of Tropigas, S.A. at 1701 Ponce—he is their boss, the one who must approve or disapprove their decisions. He establishes the corporate policy regarding their duties and responsibilities and directs the operation of the company. (A.A. 41B-44, 49-50, 71-72, 86, 105, 142-144, 171-172, 181, 206-207). He is responsible for safety at all of the offshore divisions. (A.A. 56-60. 91-95).

16. When Rodezno was hired as manager of offshore retail operations, Bullen, the President of Tropigas, S.A., sent a telex from 1701 Ponce to all the Caribbean and Central American divisions stating:

> I am pleased to advise you that effective from August 9, 1982 R. Roberto Rodezno has joined the Tropigas Miami Staff as Manager-Latin American Retail Operations. In this position, Mr. Rodezno will have direct responsibility for the Tropigas Central America Merchandise operations and will support me in the management of the operations. Roberto's background and experience is such that he will provide added strength to the Tropigas Miami Staff and strong support to each of you. I am sure I can count on you to give Roberto your full support in his new position. (A.A. 106).

Not only is Tropigas, S.A.'s home office located in Dade County, as shown by the above evidence, but there is also considerable activity carried on there that relates to the accident involved in this cause: valves are tested, approved for purchase and purchased through the Coral Gables office; cylinders are purchased and repaired through the Coral Gables office; and the President of Tropigas, S.A., who is located in Coral Gables is responsible for safety in all of the offshore divisions. (A.A. 52, 83, 91-95, 160, 392, 415-417, 440-441). The evidence available on these points is somewhat limited due to the position taken by Tropigas, S.A. below that discovery should relate solely to facts relevant to the jurisdiction and forum non conveniens questions.

REASONS WHY THE WRIT SHOULD BE DENIED

1.

THE FACTS AS SHOWN BY THE RECORD BELOW DO NOT RAISE THE QUESTION PRESENTED IN THE PETITION BECAUSE TROPIGAS, S.A. IS A RESIDENT OF FLORIDA.

The sole question presented in the petition is:

Whether it is a violation of the 14th Amendment for a Florida court to assert *in personam* jurisdiction over a non-resident Panamanian corporation in personal injury litigation arising from an accident which occurred in Jamaica, West Indies, where the alien corporate defendant does not do business in Florida and the plaintiffs

were residents and citizens of Jamaica at the time of the accident. (Brief of Petitioner, p.i).

But the facts of the record do not support this question. Rather the facts show that Tropigas, S.A. is a resident of Dade County, Florida.

The officers of Tropigas, S.A. are located in Florida. Those officers hire and fire the local managers of each division, approve expenditures by the local managers, review the financial statements of all the off-shore divisions, maintain the only bank accounts that exist for all of Tropigas, S.A., oversee the bank accounts of each division, determine what dividend the corporation will pay, review the divisions' yearly profit plans, establish incentive programs for the local managers, and give the managers raises. These officers are the only people in Tropigas, S.A. who have control over more than one local operation of the company. Clearly, these facts and the others cited in the Statement of the Case show that the home office—principal place of business of Tropigas, S.A. is in Florida.

A corporation is deemed to be a resident of the state where it is incorporated and the state where it has its principal place of business. Since Tropigas, S.A. has its home office—principal place of business in Florida, it is treated as a Florida resident. Therefore due process considerations never come into play for "the due process clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a *non-resident* defendant" only. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

2.

THE FACTS AS SHOWN BY THE RECORD BELOW DO NOT RAISE THE QUESTION PRESENTED BY THE PETITION BECAUSE THE FACTS ESTABLISH MORE THAN "MINIMUM CONTACTS."

It seems pointless to argue minimum contacts where the defendant is a resident of the forum state. However, in an abundance of caution, respondents point out that even if Tropigas, S.A. were not a resident of Florida, the facts as shown above establish that Tropigas, S.A. has more than those certain minimum contacts with Florida such that maintenance of the suit in this state does not offend traditional notions of fair play and substantial justice.

That this is true is best illustrated by comparing this cause with the facts as shown in the cases relied on by appellant to create conflict, *Helicopteros Nacionales De Columbia, S.A. v. Hall*, 104 S.Ct. 1868 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

In *International Shoe*, this Court held that a corporation's use of salesmen residing in Washington to solicit orders for merchandise from Washington customers which resulted in a substantial volume of merchandise being shipped to those customers was sufficient to support Washington's assertion of *in personam* jurisdiction over the corporation.

In *World-Wide Volkswagen*, the jurisdictional facts were as follows:

> Petitioners [a retailer and wholesale regional distributor which were incorporated and had their places of business in New York] *carry on no activity whatsoever in Oklahoma.* They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, *respondents seek to base jurisdiction on one, isolated occurrence* and whatever inferences can be drawn therefrom: the *fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.*

444 U.S. at 295. Based on these facts, this Court held that it would be a denial of due process for the courts of Oklahoma to exercise *in personam* jurisdiction over the petitioners.

In *Helicopteros*, the petitioner was a Columbian corporation with its principal place of business in Bogota, Columbia. It never had an agent for the service of process within Texas; it never performed helicopter operations in the state or sold any product that reached

the state; it never solicited business in Texas, never signed any contract in Texas, never had any employee based there and never recruited an employee in Texas. It never maintained an office or establishment or records there and had no stockholders located there. As this Court stated:

> Basically, Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

104 S.Ct. at 1873. Based on these facts, this court held that "Helicol's contacts were insufficient to satisfy the requirements of the Due Process clause of the Fourteenth Amendment." 104 S.Ct. 1874.

In the cause at bar, however, Tropigas, S.A.'s officers are located in Florida as are the general ledgers of all its divisions. It also maintains a checking account and Nassau Eurodollar account at Southeast First National Bank of Miami. The officers located in Florida hire the local managers of each division and conduct other business of Tropigas, S.A. in this state. At the very least, these activities can be described as an overseeing of all of the Tropigas, S.A.'s divisions from this state. Further, Tropigas, S.A.'s only stockholder, Tropigas International Corporation, is located in this state.

Finally, service was effected on Tropigas, S.A. by personal service on an officer of the corporation resident in the state, pursuant to §48.081(5), Fla. Stat. which states:

> Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.[2]

The opinion of the Third District Court of Appeal specifically cited to this statutory provision in affirming the trial court's holding. Clearly, these facts are sufficient to establish those contacts necessary to support an exercise of *in personam* jurisdiction by the courts of Florida.

In fact, this cause is very similar to *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1951). The facts of *Perkins* were described by this Court in *Helicopteros*, 104 S.Ct. at 1872, as follows:

> In *Perkins*, the Court addressed a situation in which state courts had asserted general

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[2]This statute has been found valid under the due process clause of the Fourteenth Amendment. *Hoffman v. Air India*, 393 F.2d 507 (5th Cir. 1968) cert. denied, 393 U.S. 924, 21 L.Ed.2d 260, 89 S.Ct. 255 (1969).

> jurisdiction over a defendant foreign corporation. During the Japanese occupation of the Philippine Islands, the president and general manager of a Philippine mining corporation maintained an office in Ohio from which he conducted activities on behalf of the company. He kept company files and held directors' meetings in the office, carried on correspondence relating to the business, distributed salary checks drawn on two active Ohio bank accounts, engaged an Ohio bank to act as transfer agent, and supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines. In short, the foreign corporation, through its president, "ha[d] been carrying on in Ohio a continuous and systematic but limited, part of its general business," and the exercise of general jurisdiction over the Philippine corporation by an Ohio court was "reasonable and just." 342 U.S., at 438, 445, 72 S.Ct., at 414, 418.

Just as in *Perkins*, Tropigas, S.A. is carrying on a continuous and systematic, if limited, part of its general business in Florida. Therefore, exercise of general jurisdiction over Tropigas, S.A. by the Florida court is reasonable and just and does not violate the due process clause of the Fourteenth Amendment.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondents Brief in Opposition was mailed this 19th day of September, 1984, to: CHRISTIAN D. KEEDY, P. A., Counsel for Petitioner, 1301 Alfred I. duPont Building, 169 East Flagler Street, Miami, Florida 33131; ROBERT J. BLACK, ESQ., 420 South Dixie Highway, Coral Gables, Florida 33146; and DEBRA L. BRADY, ESQ., 1301 Alfred I. duPont Building, 169 East Flagler Street, Miami, Florida 33131. All parties required to be served have been served.

PATRICE A. TALISMAN